



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019
CORAM :

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(MD) No.1657 of 2011
and
M.P.(MD) No.1 of 2011

1.Kamulu Ammal

2.Ethiluagalu

... Petitioners/Petitioners/
Appellants

vs.

1.C.Pounraj

2.Kaduvuru

... Respondents/Respondents/
Defendants

Prayer:- This Petition is filed under Section 115 of the Code of Civil Procedure, to set aside the order dated 19.04.2011 made in I.A.No.157 of 2010 in A.S.No.25 of 2009 on the file of the Sub Court, Theni.

For Petitioners : Mr.K.Guhan

For R1 : Mr.S.Kadarkarai

For R2 : No appearance

ORDER

The plaintiffs are the petitioners before this Court.

2.This Civil Revision Petition is directed against the order of dismissal made in I.A.No.157 of 2010 filed by the plaintiffs for appointing an Advocate Commissioner to measure the suit property, for fixing the four boundaries and to submit a report and plan. The said application was dismissed by the learned Subordinate Judge, Theni. Challenging the said order, the unsuccessful plaintiffs/revision petitioners are before this Court.

3.Mr.K.Guhan, learned counsel appearing for the revision petitioners would submit that the petitioners/plaintiffs have filed a suit in O.S.No.54 of 2006 for describing the suit property. However, the trial Court solely relying on Ex.B1 concluded that they were unable to identify the four boundaries of the suit property and hence concluded that the revenue records have been filed and



therefore, in order to set right the said omission, it is necessary to measure the property by the Advocate Commissioner.

4.Mr.S.Kadarkarai, learned counsel appearing for the respondents would submit that the petitioners themselves had admitted that the four boundaries are correct and after making such categorical statement as witnesses(PW1), they cannot turn around and contend that they need to identify the four boundaries which has been rightly dismissed by the order impugned herein.

5.Heard the learned counsel on either side and perused the papers.

6.It is to be borne in mind that the suit in question is one for bare injunction. The reasons raised for appointing the Advocate Commissioner

would clearly indicate that the plaintiff has not been able to identify the property, in respect of which, he has filed the suit. The plaintiff cannot seek for appointing the Advocate Commissioner to gather evidence for proving possession. The plaintiff has to prove his possession independently through other evidence.

7.Further, this Court and the Hon'ble Apex Court has time and again deprecated the practice of seeking appointment of an Advocate Commissioner to note down the physical features and the measurements in the suit for permanent injunction. It is for the plaintiff to prove that on the date of filing the suit and prior to it, he was in possession of the property and that there has been a threat to his possession.

8.Considering the fact that the plaintiff now wants to appoint the Advocate Commissioner not only to note down the physical features but also fix the boundaries, I do not find any infirmity in the order passed in I.A.No.157 of 2010 in A.S.No.25 of 2009 dated 19.04.2011.

9.This Civil Revision Petition is dismissed accordingly. However, the learned Subordinate Judge, Theni, is directed to dispose of the appeal in A.S.No.25 of 2009 within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)



To

The Subordinate Judge,
Theni.

WEB COPY

+1 CC to M/s.K.GUHAN, Advocate (SR-89512[F] dated 26/09/2019)

+1 CC to M/s.S.KADARKARAI, Advocate (SR-89522[F] dated 26/09/2019)

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JMN(23.10.2019) 3P : 4C