



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :10.04.2019

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P.(PD) (MD) No.688 of 2019

and

C.M.P.(MD)No.3828 of 2019

1.Ramalakshmi
2.Karthigai Murugan
3.Mariappan

... Petitioners / Petitioners /
Defendants

Vs.

1.Manoharan
2.Lionald

... Respondents / Respondents /
Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decree order made in I.A.No.52 of 2019 in O.S.No.17 of 2014 on the file of the District Munsif Court, Muthukulathur, dated 22.02.2019.

For Petitioners : Mr.M.Muniasamy

O R D E R

This Civil Revision Petition has been preferred to set aside the order made in I.A.No.52 of 2019 in O.S.No.17 of 2014 by the learned District Munsif, Muthukulathur, dated 22.02.2019.

2.Before the trial Court, the petitioners herein are the defendants and the respondents herein are the plaintiffs. For the sake of convenience, the parties are referred to as per their ranking in the original suit and at appropriate places their ranks in the revision petition would also be indicated, if necessary.

3.I.A.No.52 of 2019 was filed by the defendants to appoint the Commissioner for identifying the physical features of the suit property. The physical feature and the other details regarding trees, huts that are situated in the suit property will be proved by the respondents herein/plaintiffs, otherwise the exact physical feature, location and the details regarding existence of hut and other related facts, will not be proved before the Court, whereas the plaintiffs have not taken any steps. Even as per the evidence of P.W.2, the possession and enjoyment of the property lies only with the petitioners/defendants and the same was admitted by P.W.2 in his cross-examination. Hence, it is very much necessary for



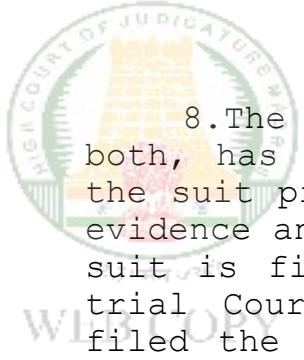
appointment of the Commissioner for placing the exact physical possession and other facts that are existing in the suit property to be placed before the Court to arrive at a proper decision.

4.The plaintiffs in their counter statement contended that the defendants have not appeared before the Court and an exparte decree was passed before 1 ½ years and again the petitioners herein / defendants appeared before the Court and P.Ws.1 and 2 were also examined and now the case stands posted for examination of P.Ws.1 and 2 and the suit filed by the plaintiffs is for permanent injunction and hence, there is no need for the measurement or the extent of the property and the appointment of Commissioner will not serve any purpose. The purpose claimed by the petitioners is not necessary and the Commissioner need not be appointed for deciding the issue, as to who is in possession and enjoyment of the property. Hence, the respondents herein/plaintiffs vehemently opposed for the appointment of the Commissioner.

5.The trial Court, considering the contention raised by both sides regarding the necessity of appointment of the Advocate Commissioner as sought by the petitioners and the stage of the case, the relief sought by the plaintiffs, has discussed in detail that the suit property is situated in Survey No.293/1A, Sayalkudi Village, Kadaladi Taluk, admeasuring 2.00.50 Hectres, equivalent to 04.95 Acres and the property belongs to one Thavamani as per the sale deed, dated 11.10.1979 and the said property also belongs to eight persons including the first plaintiff and father of the second plaintiff. All were mortgaged the suit property in the Bank. After the death of the said Thavamani on 22.12.1989, Thavamani's wife/Natchathira Ammal also died on 08.01.2003. Thavamani's son and the second plaintiff's father, viz., Alex died on 17.11.2003 leaving his wife Fathima, daughter Yogitha, son Adamsmith and the second plaintiff. A case was also filed before the Debts Recovery Tribunal in TA.No.39 of 2009 and the said issue was also settled and mortgaged deed has been returned to the legal heirs of Thavamani. Accordingly, the trial Court has discussed in detail how the property belong to the plaintiffs.

6.The defendants, who are the revision petitioners herein have also contended that the said property was once again mortgaged and the suit property contains 250 Palm trees. The plaintiff has given lease to the defendants. The suit property is having lot of Palm trees. The Palm water all are producing from the Palm tree are in enjoyment of the defendants/petitioners herein till date.

7.The petitioners also contended that the Lands Grabbing Police had taken action and a report submitted on 14.03.2014 before the Superintendent of Police, Ramanathapuram, stated that the plaintiff's mother was received Rs.1,20,000/-as a sale amount and the plaintiff has promised and ready to give the money with interest, but the defendants refused, because the plaintiff was going to civil Court to get back the amount.



8. The trial Court after considering the contention raised by both, has observed that the issue in respect of the possession of the suit property, will be decided through the oral and documentary evidence and the appointment of Commissioner is not required as the suit is filed only for the relief for permanent injunction. The trial Court also observed that the petitioners/defendants herein filed the written statement four years back and when the case is posted for arguments after closing the evidence, the present petition has been filed belatedly.

9. Heard the learned counsel for the petitioners and also perused the documents available on record, carefully.

10. A perusal of the records and also on hearing arguments on both sides, it is observed that the suit is filed long back and after four years from the date of filing of written statement, the petitioner / defendants filed the present petition seeking to appoint an Advocate Commissioner. Earlier, the for the non-appearance of the petitioner / defendants, they were set ex parte and after the lapse of 1½ years, when the case is in the final stage, the petitioners / defendants filed the present petition belatedly. Since the petitioners have filed this petition without any reason and everything is already placed before the trial Court and the purpose is only to drag on the proceedings and the dismissal order is very much passed on the facts and circumstances of the case, I do not find any reason to interfere with the order passed by the Court below and accordingly, the same is liable to be dismissed with costs.

11. Accordingly, this Civil Revision Petition is dismissed and the petitioners shall pay a sum of Rs.1,000/- to the credit of the Honourable Chief Justice Relief Fund, Madurai Bench of Madras High Court, Madurai, within a period of one week from the date of receipt of a copy of this order. The learned District Munsif, Muthukulathur, is directed to dispose the suit in O.S.No.17 of 2014 at the earliest. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court,
Muthukulathur.

2. The Section Officer, Accounts Section,
Madurai Bench of Madras High Court, Madurai.

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