



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD).No.1961 of 2017 (PD)

and

C.M.P. (MD).No.9962 of 2017

1.Marimuthu
2.Palanivelu
(rep. for Joint Family)

... Petitioners/
Petitioners/Plaintiffs

Vs.

1.Kottaiyan
2.Subramanian

... Respondents /
Respondents/ Defendants

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 16.12.2016, made in I.A.No.324 of 2016 in O.S.No.5 of 2014 by the learned District Munsif, Aranthangi, Pudukkottai District.

For petitioners : Mr.M.Suresh
For respondents : Mr.N.Balakrishnan

ORDER

This civil revision petition has been filed by the petitioners challenging the order dated 16.12.2016, passed in I.A.No.324 of 2016 in O.S.No.5 of 2014, whereby and whereunder the Court below dismissed the petition filed by the petitioners seeking to appoint an Advocate Commissioner to inspect the suit property and measure the suit property with the help of Village Administrative Officer and Surveyor and to submit a report.

2. The petitioners herein as plaintiffs have filed the suit in O.S.No.5 of 2014 for permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property in Survey Nos.36/3. According to the petitioners/plaintiffs, in a portion of the suit property in Survey No.36/3, Tamarind Trees, Palm Trees and Eucalyptus Trees and a Well are available and the same are being enjoyed by them. According to the respondents / defendants, there is no trees available in the suit property in Survey No.36/3 and the said Tamarind Trees, Palm Trees and Eucalyptus Trees and the Well are available only in the land in Survey No.36/4, which belongs to the wife of the first respondent/first defendant. Since the location of the property is disputed and in order to find out whether the Trees and the Well are available in Survey No.36/3 or Survey No.36/4, the petitioners/plaintiffs filed I.A.No.324 of 2016 seeking to appoint an Advocate Commissioner to inspect the suit property and to measure the same with the help of Surveyor and Village Administrative Officer. The Court below has dismissed the same holding that the



Advocate Commissioner cannot be appointed to prove the factum of possession and they should prove their case through oral and documentary evidence. Challenging the said order, the petitioners/plaintiffs have filed the present revision petition.

3. Heard the learned counsel appearing for both sides and perused the records carefully.

4. Admittedly, the respondents/defendants disputed the location/boundary of the suit property. According to the petitioners/plaintiffs, in the suit property in Survey No.36/3, Tamarind Trees, Palm Trees and Eucalyptus Trees and the Well are available, whereas, according to the respondents/defendants, they are available in their land in Survey No.36/4, which is situated on the eastern side of Survey No.36/3. When the location of the property is in dispute, the Court below has erroneously held that the same could have been proved through oral and documentary evidence. The Court below has dismissed the petition without any valid reason. In order to elucidate the matter and in order to give quietus to the issue, the Court below ought to have allowed the application filed by the petitioners/plaintiffs and appointed an Advocate Commissioner. But, the Court below has failed to do so.

5. In view of the above, the order, dated 16.12.2016, passed by the Court below in I.A.No.324 of 2016 in O.S.No.5 of 2014 is set aside and I.A.No.324 of 2016 is allowed. The Court below is directed to appoint an Advocate Commissioner to inspect the suit property, measure the same along with Surveyor, find out the location of the above trees and well and to file a report and plan. The Court below shall fix the expenses for the Advocate Commissioner and the same will be borne by the petitioners/plaintiffs.

6. Accordingly, this Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The District Munsif, Aranthangi, Pudukkottai District.

2.The Record Keeper,

V.R. Section, Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M.SURESH, Advocate SR-70727.

C.R.P (MD) .No.1961 of 2017 (PD)
21.06.2019