

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) 1064 of 2020
and C.M.P.No.5796 of 2020

M/s.India Financial Association of
Seventh Day Adventists Administration
Represented by its Thiru.S.Ravindran

2.S.Ravindran

...Petitioners

versus

1.K.Mallika
2.N.Krishnan

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 02.12.2019 made in I.A.No.04 of 2019 in O.S.No.01 of 2018 on the file of District Munsif Court, Sankari.

For Petitioner : Mr.R.Marudhachalamurthy

ORDER

This civil revision petition has been filed by the petitioner seeking to set aside the fair and decretal order dated 02.12.2019 made in I.A.No.04 of 2019 in O.S.No.01 of 2018 on the file of District Munsif Court, Sankari.

2. According to the revision petitioners, the petitioners have filed the said suit in O.S.No.1 of 2018 for permanent injunction restraining the defendant(s) from interfering with the possession of the suit schedule mentioned property. In the said suit, evidence was closed on the side of the plaintiffs and the suit was posted for evidence on the side of the defendants. At this stage, the petitioners have filed an I.A.No.4 of 2019 under Order 26 Rule 9 of CPC., for appointment of Advocate Commissioner to inspect the suit properties that belong to the first respondent, who purchased the same under the registered sale deed dated 26.04.2010 and to measure the same drawn to scale and to fix the boundary stone if any which is not in existence, with the help of firka surveyor and to file his report with plan. The said I.A. was dismissed by the Court below.

3. Counter affidavit has been filed by the respondents in the said I.A., who strongly objecting to the prayer of the petitioners for appointment of Advocate Commissioner and also in respect of the relief as prayed in the suit.

4. The learned counsel for the petitioners/plaintiffs submitted that the respondents/defendants had made an objection during the cross examination on their side while recording evidence. Under such circumstances, the Court below has failed to exercise its powers to grant the relief prayed for in the said I.A. Further, the learned counsel for the petitioners stated that the disputes involved in the suit and in order to determine the disputes mentioned in the suit, it is necessary that an Advocate Commissioner has to file his report, with regard to the nature of the properties, its ownership, etc., has to be determined in the suit, only at the time of final disposal of the suit. If any such Advocate Commissioner's report has been filed, the same shall be determined and decided by the Court below to come to a right conclusion with regard to the dispute of the boundaries. Therefore, the order of the Court below is liable to be set aside.

5. This Court considered the submissions made by the learned counsel for the petitioners and also perused the materials available on record. The Court below has considered the application of the petitioner, in the said interlocutory application seeking for the appointment of the Advocate Commissioner to inspect and measure the suit properties and submit to his report along with plan before the Court below. The said suit was filed by the petitioners for permanent injunction and evidence was closed on the side of the petitioners/plaintiffs and the case was posted for evidence on the side of the defendants in the suit. At this stage, the petitioners filed the said application in I.A.No.4 of 2019 during the cross examination of plaintiffs side to appoint an Advocate Commissioner. Firstly, considering the relief as prayed in the suit for permanent injunction. In the light of the decision rendered by this Court in the case of K.S.Palanisamy Vs. Ramasamy in CRP(PD).No.3895 of 2011, dated 17.01.2017 and also in the case of Sahayam @ Naresh Vs. Valan Antoraj Michael in CRP.(PD).(MD)No.1494 of 2018, dated 20.07.2018, the said prayer cannot be granted to the petitioners herein. Though if any Advocate Commissioner has been appointed, the same is nothing but to collect the evidence regarding the said property, which has to be decided only at the time of trial in the suit. Therefore, rightly, the said I.A. had not been entertained by this Court and rejected the grounds made in the said I.A. Thus, the aforesaid application filed by the petitioners/plaintiffs, had been rightly rejected by the Court

below. At the stage of recording the evidence of the defendants side, that too, while cross-examination, the petitioners ought not to have filed the said application, which had been rightly dismissed by the Court below, which is allowed, would stall the trial. The plaintiffs have to take necessary steps to produce the relevant documents or materials to establish their right over the suit property(ies). Thus, this Court cannot entertain the present Civil Revision Petition, which sans merit and the order passed by the Court below is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The District Munsif, Sankari.

Copy to

The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.R.Marudhachalamurthy, Advocate sr 22132.

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MG(CO)
SP(30/07/2020)

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