

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.2836 of 2018 and
CMP No.16676 of 2018

1. Sumathi
2. Minor Manimozhi
3. Minor Akalya

...Petitioners/Respondents/Defendants

-Vs-

1. Kalyani Ammal
2. Radha
3. Banumathi
4. Boopathi
5. Palanisamy

... Respondents/Petitioners/Plaintiffs

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order in I.A.No.2 of 2018 in O.S.No.28 of 2017, on the file of the learned Additional District and Sessions Judge, Ariyalur dated 19.06.2018.

For Petitioners: Mrs.R.Poornima

For Respondents: Mr.S.Kamadevan (for R1 to R4)

No appearance (for R5)

O R D E R

The defendants 1 to 3 in O.S.No.28 of 2017 have come up with this revision, challenging an order appointing an Advocate Commissioner to note down the existing trees and to auction the yield of the cashew trees in the suit properties.

2. The suit is one for partition and separate possession of the plaintiffs 4/5th share in the suit properties. It is now stated that two of the plaintiffs namely plaintiffs 2 and 4 have withdrawn from the suit and have filed an application to strike them off as plaintiffs in the suit.

3. Be that as it may, pending suit, the plaintiffs filed an application in I.A.No.2 of 2018, seeking appointment of an Advocate Commissioner to note down the trees and to auction the yield of the cashew trees situate in the suit properties.

4. The said application was resisted by the defendants contending that there are no such trees and the plaint does not disclose the existence of the trees. Therefore, this application has been filed only with an intention to gather evidence.

5. The learned trial Judge completely overlooking the scope of an appointment of an Advocate Commissioner in a suit for partition, allowed the application, appointing an advocate Commissioner for inspecting the suit properties and to file a report regarding the existence or otherwise of the trees in the suit properties. It is this order which is challenged in this revision.

6. I have heard Mrs.R.Poornima, learned counsel appearing for the petitioners and Mr.S.Kamadevan, learned counsel appearing for the respondents 1 to 4.

7. The law relating to the appointment of an Advocate Commissioner is fairly well settled. In a partition suit, appointment of an Advocate Commissioner to note down the physical features of the properties or existence of the trees in the properties is not justified. It is nothing but an attempt to gather evidence by the plaintiffs. Though the plaintiffs have sought for appointment of a Commissioner to auction the yield of the Cashew nut trees situate in the properties, the learned trial Judge appointed a Commissioner to note down the physical features as well as the details of the trees situated in the suit properties. This order, in my opinion will only aid the plaintiffs to collect evidence in the suit.

8. I am, therefore of the opinion that the trial Court was not right in appointing a Commissioner to aid the plaintiffs to collect the evidence. Hence, the order of the trial Court is set aside. This Civil Revision petition is allowed and I.A.No.2 of 2018 will stand dismissed. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Additional District and Sessions Judge, Ariyalur

CRP (PD) No.2836 of 2018 and
CMP No.16676 of 2018

AJS (CO)
SP (15/10/2020)



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