

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

CRP (PD) No.500 of 2018 and
CMP No.2593 of 2018

N.Puttan (Since Deceased)

1. Smt.Jayalakshmi

2. P.Balakrishnan

3. P.Basuvaraj

4. P.Puttan

5. P.Anand

6. P.Venkatesh

7. Smt.Sheela Rani

... Petitioners

Vs

J.M.Mahadevan

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 09.11.2017 in I.A No. 93 of 2017 in O.S No. 63 of 2011 on the file of the District Munsif Court at Coonoor.

For Petitioner : Mr.Srinath Sridevan

For Respondent : Mr.K.F.Manavalan

ORDER

The revision is against an order made in I.A.No.93 of 2017 filed by the plaintiffs in O.S.No.63 of 2011 seeking an appointment of a Commissioner to note down the physical features of the suit property,

2. The 1st plaintiff sued for declaration of his title and for injunction in respect of 57 cents of land in Old Survey No.102, New Survey No.24/2 of Jagathala Village within specific boundaries. The defence was that the defendant's father has also purchased certain extent of properties in Old Survey No.102 and New Survey No.24/2 under five sale deeds. The details of the Sale deeds have also been given. The plaintiff claims title to 57 cents of land in Old Survey No.102 and New Survey No.24/2, while the defendant claims title to 2 acres 90 cents in the very same Survey Number.

3. Pending suit, the plaintiff died and his legal representatives were brought on record as plaintiffs 2 to 8. When the trial was about to begin,

the plaintiffs came up with an instant application in I.A.No.93 of 2017 seeking an appointment of a Commissioner to note down the physical features of the suit.

4. This was resisted by the defendant contending that the plaintiffs are attempting to gather evidence by appointment of a Commissioner.

5. The trial Court agreed with the defence and saw the application as one to delay the suit. On the said conclusion, the trial Court dismissed an application. Hence, the revision.

6. I have heard Mr.Srinath Sridevan, learned counsel appearing for the petitioners and Mr.K.F.Manavalan, learned counsel appearing for the respondent.

7. Mr.Srinath Sridevan, learned counsel appearing for the petitioners would vehemently contend that when the parties are claiming right over different portions of land in the same Survey Number, it is but advisable for the Court to have a Commissioner appointed to demarcate property. This act cannot be seen as an attempt to gather evidence.

8. I am unable to countenance the submissions of the learned counsel appearing for the petitioners. The suit is one for declaration of title and injunction. The plaintiffs claim title to a particular extent of property situated within four boundaries as per a Sale Deed. It is for the plaintiffs to prove that they are in possession of the property as mentioned in the Sale Deed. They cannot seek the assistance of an Advocate Commissioner to establish their possession. Though the application is stated to be one to note down the physical features, the real object behind the application is only to establish the possession. The trial Court has rightly concluded that the application is an attempt to gather evidence and has dismissed it. I do not find any illegality or irregularity in the order of the trial Court to enable interference under Section 227 of the Constitution of India. The revision therefore fails and it is accordingly dismissed.

9. Considering the fact that the suit is of the year 2011, the trial Court is required to dispose of the suit within a period of eight months from the date of resumption of the physical hearings in the Courts at Coonoor. No costs. Consequently, connected miscellaneous petition is closed.

23.09.2020

Note: Time bound order

Index : Yes/No

Speaking order / Non Speaking order
vum

To

The District Munsiff Court, Coonoor



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R.SUBRAMANIAN, J.

vum



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