

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.716 of 2018

1.N.R.Selvaraj
2.N.R.Kanthasmy

..Petitioners/Plaintiffs

Vs.

1.S.Kumar
2,R.Duraisamy
3.R.Subbian
4.R.Chinnasamy
5.R.Gunasekaran
6.R.Rangaraj
7.S.Vimal Raj
8.R.Arun Prasath
9.The Thasildar,
North Taluk,
Coimbatore.

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 24.11.2016 made in I.A.No.853 of 2016 in O.S.No.1320 of 2016 on the file of the III Additional District Munsif, Coimbatore.

For Petitioners: Mr.K.S.Karthik Raja

For Respondents: No appearance for R1 to R8

Mr.Y.T.Aravind Gosh,

Additional Government Pleader For R9

O R D E R

This matter is taken up for hearing through Video-Conferencing.

2. The plaintiffs in O.S.No.1328 of 2016 have come up in Revision challenging the order dismissing the interlocutory application in I.A.No.853 of 2016 for appointment of advocate commissioner to measure the property and note down the physical features along with the surveyor.

3. The suit is one for bare injunction restraining defendants from interfering with the plaintiffs' possession. The defendants are resisting the suit contending that the description of the property in the plaint as well as the connected application is wrong. The copy of the FMB produced by the plaintiffs is not true.

4. The plaintiffs filed an application for appointment of a commissioner to visit the property as stated above. The trial court dismissed the same on the ground that the plaintiffs are attempting to fish for evidence by seeking appointment of commissioner.

5. I have heard Mr.K.S.Karthik Raja, learned counsel appearing for the petitioners and Mr.Y.T.Aravind Gosh, learned Additional Government Pleader appearing for the 9th respondent. The respondents 1 to 8 though served are not appearing either in person or through counsel duly instructed

6. Mr.K.S.Karthik Raja, learned counsel appearing for the petitioners would vehemently contend that the trial court was not right in dismissing the application in the light of the pleas taken in the written statement.

7. I do not think I can agree with the counsel for the petitioners. The law relating to appointment of commissioner is well settled. In a suit for injunction simplicitor a commissioner can be appointed only when a very strong case is made out and the requirement for appointment of commissioner is felt by the court. Appointment of commissioner in a suit for injunction is a rarity and cannot be made for mere asking.

8. In a suit for bare injunction restraining the defendants from interfering with the plaintiffs possession, the one and only requirement is that the plaintiffs should prove possession on the date of the suit. The appointment of a Commissioner cannot be resorted as a means to gather evidence.

9. I therefore do not find any illegality or irregularity in the order of the trial court dismissing the application. Hence, the Revision fails and is accordingly dismissed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(cs-ii)

//True Copy//

Sub Assistant Registrar

To

The learned III Additional District Munsif, Coimbatore.

+1cc to M/s.K.S.Karthik Raja, Advocate, S.R.No.41003

+1cc to the Additional Government Pleader(CS), S.R.No.41392

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SR-ii (CO)

rv(21/01/2021)