

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 3897 of 2018

and

C.M.P.No. 21662 of 2018

1.Kuppusami

2.Sekar

3.Varadharajan Achari

4.Ekambaram

....Petitioners/Defendants

Vs.

1.K.Ramalingam

2.S.S.Education Trust,

Rep. By its Trustee S.Sampathraj ..Respondents/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.03.2018 made in I.A.No.82 of 2016 in O.S.No. 50 of 2012 on the file of the learned District Munsif cum Judicial Magistrate, Thirukalukundran.

For Petitioners : Mr. M.Raja Sekhar

For Respondents : Mr.C.Jagadish

O R D E R

The defendants to 4 to 7 in O.S.No. 50 of 2012 are on revision, aggrieved by an order dismissing their application in I.A.No. 82 of 2016 seeking appointment of an Advocate Commissioner to note down the physical features of the suit property.

2. The suit was laid by the plaintiffs, who are respondents 1 and 2 herein seeking a bare injunction contending that the suit properties were purchased by the first plaintiff and 20 others under a registered sale deed dated 11.09.2006. After the said purchase, they had executed a registered lease deed in favour of the second plaintiff trust for a period of 30 years for the purpose of running teacher training institute and a school. It is claimed that the first defendant, who is the

President of the Village Panchayat is attempting to construct a funarel stage in the suit property. On the said claim, the plaintiffs sought for permanent injunction restraining the defendants from interfering with their possession of the suit properties.

4. Pending suit, the defendants 4 to 7 filed the instant application seeking appointment of Commissioner to excavate the earth in the place identified by the petitioners in the presence of Revenue Authorities to note down the physical features that are available during the visit. This application has been rightly dismissed by the Trial Court on the ground that it is an attempt to gather evidence in a suit for permanent injunction. The plaintiffs have sought for permanent injunction on the basis of title. It is the defence that the suit property is being used as a burial cum burning ground. In a suit for permanent injunction, it is for the plaintiffs to prove their possession on the date of the suit. The defendants need not even let in evidence. This application to direct the Commissioner to excavate the earth and note down whether there are any burials are not is really one fishing for evidence. This is nothing but an attempt to procure evidence. It is open to the defendants to show that the suit properties are classified as burial or burning ground by producing relevant revenue records. The appointment of Commissioner is wholly unnecessary in such a suit where, the plaintiffs seek only a relief of permanent injunction.

5. I am therefore, in entire agreement with the Trial Court in dismissing the application concluding that it is an attempt to fish for evidence. I do not see any illegality or irregularity so as enable me to interfere with the findings of the Trial Court. This civil revision petition fails and it is accordingly dismissed, confirming the order of the Trial Court. Consequently, connected miscellaneous petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkn

To:

The District Munsif cum Judicial Magistrate,
Thirukalukundran.

+1cc to Mr.C.Jagadish, Advocate, sr no.34307

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NMI (CO)
RMP (23/11/2020)



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