

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.3537 of 2018
and
C.M.P.No.19799 of 2018

1.Shanthi
2.Sudha

... Petitioners/Defendants

-Versus-

G.Raman

... Respondent/Plaintiff

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 25.09.2018 made in I.A.No.236 of 2018 in O.S.No.96 of 2017 by the learned Subordinate Judge, Coonoor, The Nilgiris District.

For Petitioner : Mr.S.Rajmakesh
For Respondent : Mr.J.Franklin

ORDER

This civil revision petition has been filed against the order dismissing the application filed by the petitioner for appointment of Advocate Commissioner.

2. The petitioners are the defendants in the suit in O.S.No.96 of 2017 on the file of the learned Subordinate Judge, Ootacamund, against the respondent for a decree of declaration declaring that he is the absolute and lawful owner of the suit property and for consequential relief of possession and for mandatory injunction directing the defendants to demolish and remove the fencing laid around the suit property. Pending suit, the petitioners filed an application for appointment of Advocate commissioner to measure the entire property covered in S.No.586/6 at Naduhatti Revenue village and demarcate the extent of tea gardens and vacant land in the said survey number with the help of a Government surveyor and to fix the exact extent for S.No.586/6. That application was dismissed by the court below. Challenging the same, the defendants are before this court with this revision petition.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondent and also perused the records carefully.

4. The suit is for declaration of title and for a consequential relief of possession and also for a mandatory injunction and the petitioners are only defendant in the suit. It is for the respondent/plaintiff to prove his title by way of acceptable evidence. The application under revision was filed by the petitioners/defendants only to measure the property and demarcate the same which in the considered opinion of this court would no way be helpful to decide the issues involved in the suit. That apart, a perusal of the available materials would go to show that earlier the petitioners were set ex parte and the same was set aside on condition that they should cooperate with the court for the disposal of the suit within two months. Thereafter, the trial had commenced and after the examination of the plaintiff as P.W.1, the defendants came forward with the application under revision for appointment of Advocate Commissioner. Considering all those circumstances, the court below rightly dismissed the application. On considering the reasoning given by the court below in dismissing the application, this court finds no infirmity in the same warranting interference at the hands of this court. Thus, the civil revision petition is devoid of merit and the same is liable only to be dismissed.

In the result, this civil revision petition is dismissed and the order impugned in this revision petition stand confirmed. However, considering the fact that the suit has been pending since 2007 and the trial has already commenced, the court below is directed to proceed further with the trial of the suit and dispose of the same on merits and in accordance with law within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Coonoor, The Nilgiris District.
+1 cc to Mr.S.Rajmakesh, advocate,sr.13467.

Ssi(co)
krd 25/6

C.R.P.No.3537 of 2018