



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 03.03.2020**

**CORAM:**

**THE HONOURABLE MR. JUSTICE P. VELMURUGAN**

WEB COPY

**C.R.P. (MD) No. 401 of 2020**

**and**

**C.M.P. (MD) Nos. 2321 and 2361 of 2020**

1. Sujakumari

2. Anandhakrishnan

3. Minor Chaithra

... Petitioners/Petitioners/  
Plaintiffs

Vs.

Ratnaswamy

... Respondent/Respondent/  
Defendant

Prayer: Civil Revision Petition has been filed under Article 227 of Constitution of India against the fair and decreetal order dated 14.08.2019, passed in I.A.No.2 of 2019 in O.S.No.95 of 2019, on the file of the Subordinate Court, Kuzhithurai.

For Petitioners : Mr.C.Kishore

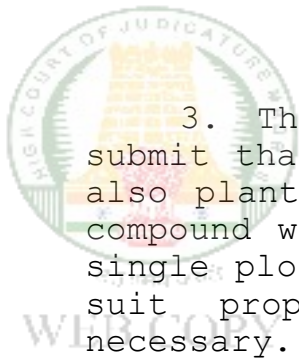
For Respondent : Mr.T.Wins

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**ORDER**

Challenging the fair and final order passed in I.A.No.2 of 2019 in O.S.No.95 of 2019, on the file of Subordinate Court, Kuzhithurai, Kanyakumari District, the plaintiffs have filed the above Civil Revision Petition.

2. The petitioners/plaintiffs have filed a suit in O.S.No.95 of 2019, on the file of the Subordinate Court, Kuzhithurai for declaration and injunction declaring the sale deed dated 28.01.2000 as null and void and restraining the respondent/defendant to interfere with their peaceful possession and enjoyment. Subsequently, the petitioners/plaintiffs filed an interlocutory application in I.A.No.2 of 2019 seeking appointment of Advocate Commissioner to note down the physical features of the petition mentioned property. The trial Court, after taking into consideration the case of both sides, dismissed the application. Challenging the said order of dismissal passed by the trial Court, the plaintiffs / petitioners have filed the present Civil Revision Petition.



3. The learned Counsel appearing for the petitioners would submit that the entire property was covered by a compound wall and also planted trees and since the entire property was covered by a compound wall, the respondent cannot claim over a small portion in single plot and in order to note down the physical features of the suit property, the appointment of Advocate Commissioner is necessary. However, the trial Court, without considering these aspects, has dismissed the application on the ground that the Advocate Commissioner cannot be appointed for collecting evidence. Hence, the learned Counsel for the petitioners seeks interference by this Court. In support of his contention, the learned Counsel has relied upon the decisions of this Court made in C.R.P. (MD) No. 344 of 2015, dated 11.04.2018 and C.R.P. (MD) No. 3926 of 2014, dated 05.08.2019.

4. Heard the submissions made by the learned Counsel for the petitioners and perused the materials available on record.

5. Admittedly, the suit is filed for declaration and injunction declaring the sale deed dated 28.01.2000 as null and void and restraining the respondent/defendant to interfere with their peaceful possession and enjoyment. The petitioners / plaintiffs stated that they are in possession and enjoyment of the suit property. In the above circumstances, the application filed by the petitioners seeking appointment of Advocate Commissioner is not necessary. Though the learned Counsel for the petitioners placed reliance on the judgments of this Court cited supra, on a careful consideration of this Court, this Court finds that the decisions cited by the learned Counsel for the petitioners are not helpful to the present case on hand. The relief sought for by the petitioners to appoint Advocate Commissioner is not necessary. It is the settled position that the Advocate Commissioner cannot be appointed either to find out the possession of the suit property or to collect evidence. On this ground, the trial Court has rightly dismissed the application. It is needless to say that the burden of proof lies only on the plaintiffs to establish their case by acceptable oral and documentary evidences in the manner known to law. In these circumstances, this Court does not find any perversity in the order passed by the trial Court.

6. Accordingly, the Civil Revision Petition is devoid of merits and the same is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. However there shall be no order as to costs.

Sd/-

Assistant Registrar (AS)

// True Copy //



C.R.P. (MD) No. 401 of 2020

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To  
The Subordinate Judge, Kuzhithurai,  
Kanyakumari District.

+1 CC to M/s.C.KISHORE, Advocate ( SR-9911[F] dated 03/03/2020 )

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