



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP PD(MD)No.381 of 2020

and

CMP (MD)No.2249 of 2020

1.M.Neelamegam

2.M.Devaraj

.. Petitioners/Defendants

Vs.

1.G.Kalyani

2.K.Vasantha

3.C.Bhuvaneswari

4.M.Jayachitra

.. Respondents/Plaintiffs

Civil Revision Petition filed under Article 227 of the Constitution of set aside the fair and decreetal order dated 14.02.2020 made in I.A.No. 2 of 2019 in O.S. No. 124 of 2019 on the file of the II Additional District Judge Tiruchirappalli.

For Petitioners : Mr.P.Arun Jayatram

For Respondents : Mr.C.Gobinath

ORDER

The respondents/plaintiffs filed a suit for partition against the petitioners/defendants in O.S.No.124 of 2019 on the file of II Additional District Court, Tiruchirapalli. During pendency of the suit, the plaintiffs filed an application in I.A.No.2 of 2019 for appointment of an Advocate Commissioner. The trial Court, after considering the factual aspects, appointed an Advocate Commissioner to note down the physical feature of the suit properties. Challenging the said order passed by the trial Court, the defendants therein have filed the present Civil Revision Petition.

2.Heard the learned counsel on either side.

3.The learned counsel for the petitioners would submit that it is only a suit for partition and they are only cultivating the land, for which, there is no need to appoint an Advocate Commissioner to establish the title of the parties. Therefore, the order passed by the trial Court is erroneous, which warrants interference of this Court.



4.The learned counsel for the respondents would submit that the land has been converted into house plots and the defendants are also trying to remove the trees standing on the land. Therefore, in order to note down the physical feature of the suit property, the plaintiffs had filed the application for appointment of an Advocate Commissioner. The trial Court has rightly allowed the application and appointed an Advocate Commissioner and therefore, the order passed by the trial Court does not require any interference.

5.Heard the learned counsel appearing on either side and perused the entire materials available on record.

6.The respondents are the plaintiffs in the suit in O.S.No.124 of 2019, wherein they filed an application in I.A.No.2 of 2019 to appoint an Advocate Commissioner to note down the physical feature of the suit property and that was resisted by the petitioners/defendants. The trial Court after considering the facts and circumstances of the case, has allowed the application and appointed an Advocate Commissioner stating the reason that if an Advocate Commissioner is appointed to note down the present physical feature of the suit property, no prejudice would be caused to the defendants and the report will facilitate the Court to arrive at a just conclusion.

7.Even though it is stated by the petitioners/defendants that it is a suit for partition and to establish the title, Advocate Commissioner need not be appointed, whereas, when one of the parties has stated that as of now the cultivating land was converted into house plots and the other parties are trying to remove the standing trees, in order to come to a conclusion and render real justice, appointment of an Advocate Commissioner is necessary and the report will be certainly helpful to the trial Judge to decide the issues effectively. Under these circumstances, this Court does not find any perversity in the order passed by the trial Court. Therefore, Civil Revision Petition is dismissed. No costs. Consequently, CMP(MD)No.2249 of 2020 is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



mj

To

WEB COPY

II Additional District Judge Tiruchirappalli.

+1 CC to M/s.C.GOBINAATH, Advocate (SR-11365[F] dated 12/03/2020)

+1 CC to M/s.P.ARUN JAYATHRAM, Advocate (SR-11474[F] dated 13/03/2020)

CRP PD(MD)No.381 of 2020
11.03.2020

TP/ (08.05.2020) 3P 4C