

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 26.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(PD) No.731 of 2021

and

C.M.P.No.6077 of 2021

1.Subramani
2.Poongavanam

...Petitioners

Vs

Kannammal (died)
Kaliyammal

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.387 of 2019 in O.S.No.405 of 2005 on the file of the learned Additional District Munsif court, Gingee, dated 04.02.2021.

For Petitioners : Mr.Dhana Jayan

ORDER

The limited prayer sought for in the present revision petition is against the fair and decreetal order passed in I.A.No.387 of 2019 in

O.S.No.405 of 2005 on the file of the learned Additional District Munsif court, Gingee, dated 04.02.2021.

2. The respondent herein is the plaintiff and the petitioners are the defendants. The respondent herein had filed the suit in O.S.No.405 of 2005, declaration and permanent injunction. Pending the suit, the petitioners filed the interlocutory application in I.A.No.387 of 2019, to appoint an Advocate Commissioner for the purpose of proving the fact that house, well, water tank and underground pipeline are situated in S.No.96 and not in S.No.79/3 and S.No.79/5 and to file a report.

3. The learned Additional District Munsif, Perundurai, by order dated 04.02.2021, has dismissed the application stating that the petitioner has other means to prove his case, either letting documentary and oral evidence and the suit being in the part heard stage and as the petition is filed belatedly and also the fact that there are various judgments rendered by out Hon'ble Apex Court and this Court that advocate Commissioner cannot be appointed to prove the factum of possession. Aggrieved by the said order, the civil revision petition has been filed.

4. The learned counsel for the petitioner submitted that the order of the trial Court was not passed on a settled proposition of law. It was further submitted that non-appointment of Advocate Commissioner would not enable the parties to adjudicate the disputes between themselves. The learned counsel further contended that the petitioner herein is cultivating the suit property in Survey No.79/3-0.59.5 acres for more than three decades. Till today, the respondent herein is in enjoyment of the suit property. The Trial Court, without considering this, erred in dismissing the application. The trial Court failed to consider that if there is any delay in appointment of Advocate Commissioner, reasonable costs may be imposed, instead of dismissing the application on the ground of mere delay in filing the application. Hence, the learned counsel prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. This Court in an earlier decision in the case of **Krishnamurthy, T.K. Vs. Tamil Nadu Water and Drainage Board reported in 2006 (5)**

CTC 178, has held that the report of the Advocate Commissioner alone can never be the basis for deciding the suit as Commissioner should not be appointed for gathering evidence to prove the case of the parties. It was further held that the parties should prove their case by themselves by letting in legally acceptable evidences. A similar view may also be taken in the instant case also. The parties should prove their case by letting in oral and documentary evidences and should not have filed an application for appointment of Advocate Commissioner. Therefore, the order of the Court below does not require interference.

7. Accordingly, the order of the Court below made in I.A.No.387 of 2019 in O.S.No.405 of 2005 is confirmed and the present civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

26.03.2021

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Index:Yes/No

Speaking order/Non Speaking order

sbn

To

The Additional District Munsif Court,
Gingee.



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