

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(PD).No.1302 of 2021

and

C.M.P.No.10172 of 2021

[Through Video Conferencing]

V.T.Marimuthu (Deceased)

1.M.Gandhimathi

2.Smt.S.Meena

3.S.Divya

4.S.Ajay

5.S.Arunkumar

... Petitioners/Plaintiffs

vs.

1.M.Ramasamy Konar @ Palkarar

2.M.Velusamy

3.V.Palanisamy

4.V.Nagaraj

... Respondents/ Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India praying to set aside the Fair and Decretal order dated 11.03.2020 passed in I.A.No.415 of 2018 in O.S.No.1234 of 2011 on the file of V Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.S.Saravanakumar

For Respondents : No appearance

ORDER

The plaintiffs in O.S.No.1234 of 2011 now pending on the file of the V Additional District Munsif Court at Coimbatore are the revision petitioners herein.

2.They are aggrieved by the Order dated 11.03.2020 in I.A.No.415 of 2018. The said Interlocutory Application had been filed by the revision petitioners/plaintiffs under Order XXVI R9 of the Code of Civil Procedure seeking appointment of an Advocate Commissioner to note down the physical features of the property and also to measure the same according to the Partition Deed dated 27.07.1948 with the assistance of the Town Surveyor.

3.It is seen that the suit is pending for more than a decade. The revision petitioners / plaintiffs have instituted the said suit seeking injunction restraining the defendants from interfering with peaceful possession except by due process of law. The cause of action had commenced in the year 1970 when the 1st plaintiff was inducted as a tenant and thereafter, on 01.07.2011 when the defendants apparently took steps to evict the plaintiffs by force. The written statement has also been filed. Issues had been framed and the parties had been invited to adduce evidence. The plaintiffs had been examined as witnesses and

thereafter evidence on the side of the plaintiffs was closed. It is now the turn of the defendants to lead evidence. At that stage, the plaintiffs filed I.A.No.415 of 2018, as stated above for appointment of an Advocate Commissioner to measure the suit property with the help of the Surveyor. The learned V Additional District Munsif Judge, Coimbatore was not impressed with such application.

4.The learned V Additional District Munsif at Coimbatore had stated that the application had been filed only to fish out facts and stated that such step is not permissible. It had also been observed that a burden is cast on the revision petitioners / plaintiffs to prove their case through documentary evidence and oral evidence. The learned V Additional District Munsif had also lamented that the application had been filed after nearly 9 years without giving any reason as to why the plaintiffs had not done so for the past 9 years.

5.Let me not interfere with the said Order. Let trial proceed with evidence being recorded on the side of the defendants. If on conclusion of evidence and while analyzing the evidence, the learned V Additional District Munsif takes a decision that there is some further facts to be resolved with respect to the identity of the property, then it is open to the learned V

Additional District Munsif at Coimbatore to *suo motu* appoint an Advocate

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Commissioner to clarify those aspects. If there is no scope for such clarification then, the learned V Additional District Munsif may proceed further after recording the evidence. Let me not interfere with the said order rather give that particular option to the learned V Additional District Munsif at Coimbatore on conclusion of recording of evidence.

6. With the said observation, the revision petition is dismissed. Consequently, the connected miscellaneous petition is also closed. No order as to costs.

19.07.2021

Index: Yes/No
Internet: Yes/No
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To

1. The V Additional District Munsif Court,
Coimbatore.

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