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C.R.P.(PD).No.1212 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.R.P.(PD).No.1212 of 2020
and C.M.P.No.6557 of 2020

1.S.M.A.Basheer Ahamed
2.K.A.Rasheeda Beevi
3.M.Rahima Beevi
4.S.M.A.Nazerulla
5.S.M.A.Siddique

.. Petitioners

Versus

V.Kamala

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.08.2019 passed in I.A.No.622 of 2013 in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur.

For Petitioners : Mr.C.T.Mohan
For Respondent : M/s.R.Meenal

ORDER

The plaintiffs in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur are the revision petitioners herein.



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2. The plaintiffs have filed the suit against the defendants for bare injunction restraining the defendants their men agents, representatives or anyone claiming to them from encroaching the suit schedule property. Thereby, disturbing the plaintiffs peaceful possession and enjoyment of the property. As per the plaint averments, they are the owner of the suit property which originally belongs to one Sami Naicker and Arjuna Naicker. It is claimed that the plaintiff's father S.M.A.Kabeer purchased the suit property by means of a sale deed dated 09.04.1984. The father of the plaintiffs by name S.M.A.Kabeer died on 14.11.2011 and as legal heirs, the plaintiffs have succeeded to the estate of their father. According to the plaintiffs from the date of death of their father, the plaintiffs are in possession and enjoyment of the suit property peacefully. According to the plaintiffs the suit property is a vacant site and they periodically caused inspection of the suit property. When the plaintiffs intended to improve the suit property by putting up a building thereon. They were shocked to find that the defendants are leveling the suit property, the plaintiffs restrained them. It is in this context, the plaintiffs have filed the suit for bare injunction.



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3. A written statement has been filed by the 1st defendant denying the suit averments as false. According to the defendants earlier there was a suit filed in connection with the same property in O.S.No.39 of 1999 filed by the 1st defendant against the father of the plaintiffs. The suit was decreed against which first appeal was filed in A.S.No.63 of 2009 on the file of Sub-Judge, Tambaram, the appeal was also dismissed against which the S.A.No.1002 of 2011 was filed before this Court and it was dismissed. The plaintiffs by suppressing the earlier proceedings have filed the present suit and therefore it is barred by under Section 11 of CPC. It is also stated that the suit was filed by miserably furnishing wrong boundaries of the suit property. The plaintiffs have not come forward to the Court with clean hands and suppressed many particulars. Therefore, the defendants prayed for dismissal of the suit.

4. Pending suit the plaintiffs have filed the instant application in I.A.No.622 of 2013 in O.S.No.254 of 2013 for appointment of an Advocate Commissioner. By order dated 02.08.2019, the trial Court dismissed the application on the ground that it is for the plaintiffs to prove their case by oral and documentary evidence and they cannot seek for appointment of an



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Advocate Commissioner. It was also stated that when the suit was filed for a bare injunction, appointment of Advocate Commissioner to note down the physical features of the properties is unnecessary especially when the suit property is, admittedly, a vacant land.

5. The learned counsel appearing for the petitioner would vehemently contend that the trial Court failed to appreciate the scope of the application filed under Order 26 and Rule 1 and 2 CPC. The trial Court failed to consider that the defendants in their written statement have stated that the plaintiff has furnished erroneous boundaries of the suit property. While so, appointment of Advocate Commissioner is desirable. However, the Court below on misconception held that the present application has been filed only to fish out the evidence for the purpose of substantiating the plaint averments appointment of Advocate Commissioner is very much necessary. Therefore, the learned counsel prayed for setting aside the order passed by the Court below.

6. On the above contention, this Court heard the learned counsel appearing for the respondents/defendants and perused the materials placed on record.



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7. Admittedly, the suit property is a vacant land. The plaintiffs claim themselves to be in possession of the vacant land and on the strength of such averments the suit was filed. On the other hand, the defendants have defended the plaint by stating that earlier the defendants have filed the suit against the father of the plaintiff herein and succeeded in getting a decree and that was also affirmed by this Court in the Second Appeal preferred by them against. While so, suppressing material particulars the plaint has been filed.

8. Be that as it may, the plaintiff in the plaint have asserted that they are in possession and enjoyment of the suit property from the date of death of their father. It was also stated that they have erected name board in the suit land and also caused periodical inspection of the land. When such was the averment made in the plaint to the effect that the plaintiffs are in possession of the property in question it is for them to prove such possession independently by oral or documentary evidence. When the plaintiffs have filed the suit for bare injunction, it is not open to them to seek for appointment of Advocate Commissioner to note down the physical features



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of the property or as to who is in possession of the property. As rightly pointed by the trial Court the present attempt on the part of the plaintiffs in filing an application for appointment of Advocate Commissioner pending the suit for bare injunction is legally impermissible. Such an attempt on the part of the plaintiffs is nothing short of fishing out evidence to strength their case in a suit for bare injunction, it is well settled, that appointment of Advocate Commissioner is not permissible or desirable. Therefore, the trial Court is wholly justified in appointing an Advocate Commissioner in the suit filed by the plaintiffs for bare injunction. In such view of the matter, this Court finds no infirmity in the order passed by the trial Court warranting interference.

9. In the result, order dated 02.08.2019 passed in I.A.No.622 of 2013 in O.S.No.254 of 2013 on the file of the Additional District Munsif Court, Alandur stands confirmed, the Civil Revision Petition is dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

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To

The Judge,
Additional District Munsif Court,
Alandur.



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S.KANNAMMAL, J.,

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