



C.R.P. No.3295 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.3295 of 2018
and
C.M.P. No. 18651 of 2018

Mohammed Sheriff (died)

2 Jameela Be
W/o.Mohamed Sheriff

3 Narkis Begam
D/o.Mohamed Sheriff

4 Nafisa Begum
D/o.Mohamed Sheriff

(Petitioners 2 to 4 brought on record as LR's of
P-1 viz Mohamed Sheriff vide court order
dated 02/11/2021 made in CMP No.3699 of
2021 in CRP (PD) No.3295 of 2018)

... Petitioners

Vs

Sheik Alladin
S/o. Sheik Sulaiman

... Respondent



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PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order and decretal order dated 06.02.2018 made in I.A.No.22/2017 in O.S.No.7/2016 on the file of the Court of the I Additional District Judge, Tindivanam.

For Petitioners : Mr.T.Dhanasekaran

For Respondent : Mr.T.Chezian

ORDER

Challenging the impugned order passed in I.A.No.22 of 2017 in O.S.No. 7 of 2016, on the file of learned I Addl. District Judge, Tindivanam, the 1st defendant preferred this Civil Revision Petition.

2. Originally, a Suit in O.S.No. 7 of 2016 was filed by the respondent/plaintiff herein for the relief of recovery of possession and mandatory injunction to remove all the superstructures from item No.1 of suit property and also permanent injunction against eleven defendants. The defendants also contested the suit denying the plaintiff's right over the suit property and also contended that the plaintiff is not in possession of the



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property and the alleged title deeds are false one. During the pendency of the proceedings, the 1st defendant filed an application in I.A.No. 22 of 2017 under Order 26 Rule 9 of C.P.C. praying to appoint an Advocate Commissioner to inspect the item Nos.1 and 2 of the suit properties with the help of Surveyor, VAO and Government Engineer and to file report and plan. The said application was strongly opposed by the plaintiff stating that the 1st defendant is not entitled to file the said application in the suit, which was filed by him. Accordingly, based on the written statement, issues were framed and trial also begin. At the stage of evidence, the 1st defendant had come forward with the said application, as such, it is not maintainable, and in order to collect evidence, more particularly, with regard to possession. However, it is a settled preposition that possession of the parties cannot be decided based on the Commissioner's report. On hearing both sides, the trial judge dismissed the application holding that the plaintiff already admitted that the defendants 1 to 3 are in possession of the suit property. So, there is no necessity for appointment of Commissioner and the oral and documentary evidences are sufficient to establish the plaintiff's case. Accordingly, the said application was dismissed. Challenging the said



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findings, the revision petitioner/1st defendant preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner argued that the trial court failed to take note of the fact that the revision petitioner is enjoying the property from the date of purchase and constructed a superstructure in the suit property. But, the plaintiff filed a suit for recovery of possession and to remove the superstructure as the defendants have no right over the suit properties. To prove the construction in the suit property and also to prove his defence, the Revision Petitioner filed the application to appoint an advocate commissioner. But, the trial court failed to appreciate the said fact and erroneously dismissed the application.

4. By way of reply, the learned counsel appearing for respondent/plaintiff submitted that during the evidence of P.W.1, the 1st defendant filed the said application in order to collect evidence and the same was rightly appreciated by the trial judge, thereby, rightly dismissed the application.



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WEB COPY 5. Heard and considered rival submissions made by learned counsel for revision petitioners as well as respondent and perused the records.

6. On perusal records, it would reveal that the plaintiff filed a suit for recovery of possession and to remove the superstructure in the suit property against eleven defendants in O.S.No. 7 of 2016 and the contesting defendant also denied the plaintiff's right over the property and evidence also begin. During the pendency of proceedings, the 1st defendant preferred the said application to appoint an advocate commissioner to note down physical features and also to measure the property with the help of Surveyor. But, on seeing the fact that the main allegation that the defendants have no right over the suit properties, but they are in possession. So, the plaintiff approached the court for recovery of possession. On the other hand, the 1st defendant contented that he purchased the property and put up a superstructure in the suit property and to establish the same, he wanted to appoint an advocate commissioner and accordingly, he filed the said application. On considering the main relief claimed in the suit, the trial



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court failed to appreciate the said facts. Hence, the findings of the learned trial judge is liable to be set aside.

7. In the result, this Civil Revision Petition is allowed and the findings of the learned trial judge in I.A.No. 22 of 2017 is set aside. However, the trial court is directed to proceed with the trial and to dispose the case within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

29.11.2022

Index: Yes/No
Internet: Yes/No
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To

I Addl. District Judge,
Tindivanam.



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T.V.THAMILSELVI, J.

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