



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P(MD)No.1888 of 2017

and

C.M.P(MD)No.9804 of 2017

WEB COPY

1) Jeyapal
2) Sankaranarayanan ... Revision Petitioners/Petitioners/
Plaintiffs

vs.

Chellathai ... Respondent/Respondent/Defendant

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.08.2017 passed in I.A.No.141 of 2017 in O.S.No.192 of 2016 on the file of learned District Munsif, Kovilpatti.

For Petitioners : Mr.Pon Senthil Kumaran
For Respondent : Mr.S.Muthumalai Raja

ORDER

The petitioners are the plaintiffs and the respondent is the defendant in O.S.No.192 of 2016 on the file of the learned District Munsif, Kovilpatti. During the pendency of the suit, the petitioners/plaintiffs filed an application before the Court below under Order 26 Rule 9 CPC, for appointing an Advocate Commissioner to note down the physical features of the suit properties. The said petition was dealt by the trial Court and dismissed the same. Challenging the said order passed by the trial Court, the petitioners/plaintiffs have filed the present revision petition before this Court.

2. Heard both sides.

3. Admittedly, the petitioners filed a suit for declaration and injunction and though the petitioners have not filed the application under Order 26 Rule 9 CPC along with the plaint, they filed the same during the pendency of the suit in a later stage and that petition was dismissed.

4. Perusal of record shows that the suit is for declaration and injunction and therefore there is no question of disputing the identity of the properties. It is a settled proposition that in the injunction suit, commissioner cannot be appointed for collecting evidence for establishing possession and therefore, the



trial Court has rightly dismissed the petition. Now, it is reported that the suit is in the trial stage. Therefore, under these circumstances, this Court does not find any perversity or illegality or infirmity in the order passed by the trial Court.

5. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS i)

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Sub Assistant Registrar(CS)

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To

The District Munsif,
Kovilpatti.

C.R.P (MD)No.1888 of 2017

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