



C.R.P.(MD)No.1718 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 12.07.2023

CORAM:

THE HONOURABLE **MR.JUSTICE C.KUMARAPPAN**

C.R.P.(MD)No.1718 of 2018

and

CMP(MD)No.7365 of 2018

1.Anjammal

2.Palanivelan

Jeevanantham (died)

3.Ramamirtham

... Petitioners/Petitioners/Plaintiffs

Vs.

Muthuvairavan

... Respondent / Respondent / Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.205 of 2015 in O.S.No.63 of 2015, dated 01.09.2016, on the file of the District Munsif Court, Pattukottai.

For Petitioners : Mr.D.R.Murugesan

For Respondent : Mr.V.Karna
for Mr. V.Ramamurthy



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ORDER

The instant Civil Revision Petition has been filed, against the order passed in I.A.No.205 of 2015 in O.S.No.63 of 2015, dated 01.09.2016, on the file of the District Munsif Court, Pattukottai. The revision petitioners herein are the plaintiffs and the respondent herein is the defendant before the trial Court.

2. According to the petitioners they have sought for an appointment of Advocate Commissioner, to note down the physical feature on the ground that the suit property is not standing as a separate lot and it is mingled with the other properties belonged to the plaintiffs. However, the coconut trees planted in those lands are in the same line and same age, therefore, to find out the physical feature of the suit property, they prayed for an appoint of an Advocate Commissioner.

3. Per contra, the learned counsel for the respondent has strongly objected the petition on the ground that the petitioner is attempting to prove the possession through the appointment of Advocate Commissioner.



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4. After hearing both sides, the learned trial Judge has dismissed the application by referring the judgment of this Court, reported in **2008-3-CTC-597 (K.M.A.Wahab V. Eswaran)**. Wherein, this Court has held that an appointment of Advocate Commissioner to prove the possession, cannot be allowed. Therefore, the learned trial Judge has given a finding that the petitioners attempted to prove the possession through appointment of Advocate Commissioner and dismissed the application.

5. Aggrieved with the order of the learned trial Judge, the revision petitioners / plaintiffs have come up with the instant application.

6. The learned counsel for the revision petitioners would submit that they filed an application only to note down the physical features of the lie of the suit property with the other properties of the plaintiffs, and also to explain the standing of the coconut trees in the suit property and the age and height of tree. He would further submit that the above aspect would be more helpful to explain to the Court about the topography and the same would obviate much oral evidence. Therefore, prayed to allow this application.



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7. The learned counsel for the respondent objected the application on the same ground as mentioned in the counter statement.

8. I have given my anxious consideration to the either side submission.

9. This Court perused the averments of the petition and the plaint. It is the specific submission of the plaintiffs that they are the owners of the suit property and that they have been in possession of the suit property. However, they filed this application for appointment of Advocate Commissioner only to show that the grown up coconut trees are of the same age and same height, which was planted in the suit property.

10. The learned counsel for the petitioners in the suit sought for a relief of declaration and for permanent injunction. Here, the defence put forth by the respondent is that the petitioners are attempting to prove the possession by appointing an Advocate Commissioner. But, such a defence could not be visualised from the affidavit, and what the petitioner want is to explain the lie of the land along with standing crop. Therefore, their



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pleading of this petition are the plaint manifest the justification for appointment of Commission. Further, the reasoning of the trial Judge, is absent as to from which averments, he could find that the instant application has been filed only to prove possession.

11. Therefore, this Court is of the firm view that the very order of the learned trial Judge is liable to be interfered with. Hence, the instant Civil Revision Petition is allowed, thereby, the order passed in I.A.No.205 of 2015 in O.S.No.63 of 2015, dated 01.09.2016, on the file of the District Munsif Court, Pattukottai, is ordered to be set aside and the I.A.No.205 of 2015 is to be restored on file and the learned trial Judge is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of the copy of this order. There shall be no order as to cost. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes/No
Index : Yes/No
Ls

12.07.2023



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C.KUMARAPPAN.,J.

Ls

To

- 1.The District Munsif Court,
Pattukottai.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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