



C.R.P.(MD) No.2653 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2023

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD) No.2653 of 2018

and

C.M.P.(MD) No.11666 of 2018

1.Ramaraj Nayackar

2.Sundraraj

... Petitioners

Vs.

Akilandeshwari

... Respondent

Prayer:- This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the District Munsif cum Judicial Magistrate Court, Sivagiri in I.A.No.229 of 2017 in O.S.No.68 of 2010, dated 04.12.2017.

For Petitioners : Mr.P.T.Thiraviam

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioners to set aside the impugned fair and decreetal order dated 04.12.2017 passed by the District



C.R.P.(MD) No.2653 of 2018

Munsif cum Judicial Magistrate Court, Sivagiri in I.A.No.229 of 2017 in

O.S.No.68 of 2010.

2. The learned counsel for the petitioners is present. There is no representation on the side of the sole respondent.

3. The petitioners are the defendants and the respondent is the plaintiff in O.S.No.68 of 2010 on the file of the District Munsif cum Judicial Magistrate Court, Sivagiri. The said suit in O.S.No.68 of 2010 was filed by the respondent/plaintiff for permanent injunction.

4. During the pendency of the suit, the respondents/defendants filed I.A.No.229 of 2017 seeking for appointment of an Advocate Commissioner to inspect and survey the suit property, note down the physical features of the same with the help of the Surveyor and file a report in this regard. The Court below has dismissed the said I.A.No.229 of 2017, against which, the present Civil Revision Petition has been filed.

5. The learned counsel for the petitioners/defendants would submit that a very appointment of an Advocate Commissioner would prove their case, and



C.R.P.(MD) No.2653 of 2018

further submit that, to prove that the possession of the suit property is vested with the petitioners/defendants, it is required for appointment of an Advocate Commissioner. The learned counsel for the petitioners also relied upon a decision of this Court in the case of **Anwar Batcha and another Vs. S.Mahuedoom**, reported in 2014 (4) TLNJ 365 (Civil), wherein, it has been held that, the Advocate Commissioner is to be appointed for the purpose of elucidating the matter in dispute and for making local inspection at the spot.

6. I have given my anxious consideration to the submission of the learned counsel for the petitioners.

7. Though the learned counsel for the petitioners would submit that the very appointment of the Advocate Commissioner is only for elucidating the matter in dispute, on perusal of the affidavit, the main contention of the petitioners is that if the Advocate Commissioner is appointed, the absence of possession by the respondent/plaintiff and the possession of the petitioners/defendants would be established through the existing physical features. Therefore, it is clear that the petitioners/defendant came forward with I.A. for appointment of an Advocate Commissioner only to prove their possession.



C.R.P.(MD) No.2653 of 2018

WEB COPY

8. This Court is of the view that under law, the Advocate Commissioner cannot be appointed to prove the possession. The possession of the petitioners/defendants can be established only through oral and documentary evidence. Therefore, this Court do not find any infirmity or perversity in the impugned order passed by the Court below.

9. Accordingly, this Civil Revision Petition stands dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.

22.09.2023

Internet : Yes/No
NCC : Yes/No
jen

To

The District Munsif cum Judicial Magistrate,
Sivagiri.



WEB COPY



C.R.P.(MD) No.2653 of 2018

C.KUMARAPPAN, J.

jen

C.R.P.(MD) No.2653 of 2018
and C.M.P.(MD) No.11666 of 2018

22.09.2023