



C.R.P.(MD)No.1852 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD)No.1852 of 2019

and

C.M.P(MD) No.9501 of 2019

1. M.Ramaiah Thevar

2. R.Jeyakumar

... Petitioners/Respondents/ Defendants

-vs-

A.Ramakrishnan

... Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.4 of 2015, dated 07.08.2019 on the file of the District Munsif Court, Theni.

For Petitioners : Mrs.M.Padmavathy

For Respondent : Mr.S.R.A.Ramachandran

ORDER

The defendants in O.S.No.4 of 2015, on the file of the District Munsif Court, Theni, is the revision petitioners herein.



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2. The respondent herein as plaintiff has filed the above said suit for the relief of permanent injunction and not to evict them unless due process of law. Pending suit, the plaintiff had filed I.A.No.1 of 2019 for appointment of an Advocate Commissioner to note down the possession, physical features, the boundaries along with Surveyor and to file a report. The said application was resisted by the defendants on the ground that the Commissioner cannot be appointed for the purpose of finding out the possession of the suit schedule properties. However, the trial Court has proceeded to allow the said application on the ground that the defendants have filed another suit in O.S.No.165 of 2015 before the same Court for the relief of declaration, and permanent injunction and there is a dispute between both the parties with regard to the extent of shares allotted to them in the partition. Challenging the same, the present Civil Revision Petition has been filed by the defendants.

3. According to the learned counsel appearing for the defendants, when there is no dispute with regard to the identity of location of the suit schedule properties, the question of appointment of an Advocate Commissioner would not arise in the suit for permanent injunction not to evict them unless due



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process of law. Therefore, in such a suit, the question of appointment of an Advocate Commissioner would not arise citing the pendency of a connected suit.

4. Per contra, the learned counsel appearing for the respondent/plaintiff had contended that there is a serious dispute among the sharers in the partition deed and there is a dispute with regard to the identity of the property. Hence, he prayed for sustaining the order passed by the trial Court.

5. I have carefully considered the submissions made by the learned counsel on either side.

6. A perusal of the typed set of papers clearly indicate that the suit is for permanent injunction and not to disturb the possession of the plaintiff unless due process of law. The entire burden is upon the plaintiff to establish the identity of location, extent and boundaries of the property in order to get a decree. He cannot collect evidence by appointment of an Advocate Commissioner to note down the physical features or note down who is in possession of the suit schedule property. That apart, the said order of



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appointment of an Advocate Commissioner cannot be issued citing the pendency of a connected suit. In the connected suit, the revision petitioners herein as plaintiffs, the burden will be upon them to establish the exact location of the property. Therefore, when they are not interested in appointment of an Advocate Commissioner in the other suit, the question of appointing an Advocate Commissioner in the present suit does not arise. The trial Court had erroneously allowed the said application, the said order is set aside.

7. Accordingly, this Civil Revision Petition is allowed. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

18.04.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
ebsi

To



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1. The District Munsif Court,
Theni.

R.VIJAYAKUMAR,J.

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