

Rajendran Vs. Lilly Ammal Alias Nelli Ammal and Another

Rajendran Vs. Lilly Ammal Alias Nelli Ammal and Another

SooperKanoon Citation : sooperkanoon.com/790286

Court : Chennai

Decided On : Nov-25-1997

Reported in : 1998(2)CTC163

Judge : S. Jagadeesan, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) -- Sections 75 and Order 26, Rule 10

Appeal No. : C.R.P.No. 1028 of 1997 and C.M.P.Nos. 5319 and 11765 of 1997

Appellant : Rajendran

Respondent : Lilly Ammal Alias Nelli Ammal and Another

Advocate for Def. : Mr. C. Godwin, Adv.

Advocate for Pet/Ap. : Mr. K.N. Thampi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

1. By consent of both the counsel, the Civil Revision Petition is taken up for final disposal.

2. The petitioner is the second defendant in O.S.No.811 of 1994 on the file of the District Munsif, Nagercoil. The first respondent herein has filed the said suit for

declaration of her title and for injunction restraining the defendants from trespassing into the plaint schedule property. The suit has been filed in July, 1994. The petitioner herein filed an application I.A.No.962 of 1996 for appointment of the Advocate Commissioner, after the examination of P.W.1, to note down the physical features of the suit property with special reference to the building, to note down the nature of the property with reference to the level of the property, compound walls 'if any' on all sides and pathway etc., and such other points as may be required at the spot. The application was dismissed by the lower court by order dated 19.2.1997 and aggrieved by the same, the present revision has been filed.

3. Learned counsel for the petitioner fairly represented that the appointment of Advocate Commissioner is only to note down the physical features of the property in respect of the possession and enjoyment of the same, by different parties. This is necessitated because the plaintiff is enjoying the properties by leasing out the same to tenants and whereas the second defendant claims to be in possession of one of the items of the property and hence unless the Advocate Commissioner is directed to note down the physical features of the property along with the possession of respective parties, the petitioner would be prejudiced. From the arguments it is clear that the Advocate Commissioner is sought for only to note down the possession by the respective parties. For this purpose the Advocate Commissioner cannot be appointed. As such I do not find any error of jurisdiction in the order of the court below and accordingly the revision is dismissed. Consequently, the Civil miscellaneous petitions are, also dismissed.