

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2015

C O R A M

THE HONOURABLE **Mr.JUSTICE K.KALYANASUNDARAM**

CRP.PD.No.1143 of 2015
and M.P.No.1 of 2015

1.Lalitha

2.Sekar

...

Petitioners

Vs.

Govindan

...

Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 20.01.2015 passed by the District Munsif Court, Katpadi, in I.A.No.550 of 2013 in O.S.No.620 of 2009.

For Petitioners : Mr.R.Margabandhu

ORDER

The civil revision petition is directed against the order dated 20.01.2015 passed by the District Munsif Court, Katpadi, in I.A.No.550 of 2013 in O.S.No.620 of 2009.

2. The defendants in O.S.No.620 of 2009 on the file of the District Munsif, Katpadi, are the petitioners in this civil revision petition. The respondent had instituted the suit against the petitioners for mandatory injunction directing the defendants to stop the construction of any building in the red marked suit property and to removal the encroached portion therein and for other reliefs.

3. At the instance of the plaintiff, an Advocate Commissioner was appointed and after inspection, the Commissioner has filed his report along with plan on 07.10.2010. The petitioners had filed their objections to the Commissioner's Report on 08.03.2011 along with condone delay petition.

4. Subsequently, the suit was taken up for trial, after completion of the evidence of the plaintiff. Four witnesses were examined by the defendants. The Advocate Commissioner was examined as P.W.3 and his report and plan were marked in the suit. At that juncture, the petitioners filed an application in I.A.No.550 of 2013 in O.S.No.620 of 2009 to scrap the report of the Advocate commissioner and appoint a new advocate commissioner to inspect and measure the suit property with the help of District Level Officer of Survey Department. The application was opposed by the plaintiff. The trial Court rejected the application. Aggrieved by the order, the present civil revision petition is filed.

5. Mr.R.Margabandhu, learned counsel for the petitioners submitted that the advocate commissioner and the surveyor were examined as D.Ws.2 and 3 and there are material construction in their

evidence. The report of the advocate commissioner would reveal that there was no boundary stone to measure the suit property and the commissioner has not given any details about the encroachment. The learned counsel further submitted that the report of the advocate commissioner will not be helpful to decide the issues involved in the suit and on the other hand, it will be prejudicial to the interest of the defendants.

6. The learned counsel further submitted that the defendants had purchased the property measuring 35 feet length, East-West and put up construction up to 33 feet East West leaving 2 feet vacant for passage and therefore, there is no encroachment made by the defendants.

7. It is seen that the report of the commissioner was already marked in this case and the advocate commissioner and the surveyor were also examined as witnesses in the suit. The petitioners/defendants filed their objections to the commissioner report dated 07.10.2010, on 08.03.2011 along with condone delay application. Since the report was marked as exhibit in the suit, the trial Court dismissed the application as it was filed at the belated

stage. Hence, I do not find any illegality or irregularity in the order impugned.

8. Further, it is settled law that the burden of proof is on the plaintiff to prove that the defendants have encroached on the land of the plaintiff. The trial Court would decide the issues involved in the suit after considering the entire evidence and a decision cannot be taken only on the basis of the report of the Advocate Commissioner. I am of the view the apprehension of the petitioners is unfounded. However, the trial Court shall decide the suit on merits and in accordance with law as expeditiously as possible.

With the observations, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.03.2015

Index : Yes/No
Internet : Yes/No
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Note: Issue order copy on 18.03.2015

To
The District Munsif Court, Katpadi.

K.KALYANASUNDARAM,J.

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