

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.03.2015

Coram

The Honourable Mr. Justice N.KIRUBAKARAN

C.R.P. (PD) No.747 of 2015
& M.P.No.1 of 2015

1.Kullan
2.Chandran

.. Petitioners/Defendants

Vs.

Karuppannan

... Respondent/Plaintiff

Civil Revision Petition has been filed against the order and decreetal order dated 08.01.2015 in I.A.No. 921 of 2014 in O.S.No.56 of 2012 on the file of the 1st Additional District Munsif Court, Salem.

For Petitioners : Mr. R. Neelakandan

ORDER

The defendants are before this Court, aggrieved over the dismissal of appointment of Advocate Commissioner, to visit the suit property and measure the same with a specific finding to measure the properties and also to find out the boundaries.

2. Heard Mr.R.Neelakandan, learned counsel for the petitioner.

3. It is seen from the records that the respondent as plaintiff filed the suit for declaration of title to the suit property and consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property. The suit property mentioned in the schedule is comprised in S.No.5/2. According to the petitioner, the property comprised in S.No.5/2 was purchased from the respondent's father by virtue of sale deed dated 09.03.1985 and 01.02.1990. However, the said survey number was amounted to be reflected in the sale deeds. Actually the properties sold is S.No.5/2 and it is in the possession of the petitioners. The said application was contested by the respondent/plaintiff stating that much extent of property was available with the respondent's father who sold a portion of the property to an extent of 1.96 acres comprised in S.No.7 by virtue of sale deed dated 03.09.1985, 04.12.1989 to one Palaniammal and thereafter on 01.02.1990, 0.62 cents comprised in S.No.7/1 was sold to one Chandran and the left out portion 2.58 cents was retained by the respondent's father without alienating the said property. The respondent's father settled the said property comprised in S.No.5/2 to the respondents on 27.10.2011 and he is in possession. Therefore, there is no question of appointment of advocate commissioner to visit the property. The respondent/plaintiff is in possession of the property.

4. The Trial court after verifying the Exs.P1 to P3, sale deeds obtained

by the petitioner's father from the respondent's father, found that there is no mention of S.No.5/2 in those documents and even the boundaries are not in conformity. The document filed by the respondent show that the suit property is different from the properties which were sold by the respondent's father. All the subsequent documents were also standing in the name of the respondent. In the absence of proof to show that the S.No.7/1 and 5/2 are one and the same and both the survey numbers refer only one property, the trial court rightly dismissed the petition. The said finding cannot be said as perverse as it is based on documents. Exs.P1 to P3 documents through which the petitioners father purchased the property from the respondent's father does not show any reference about S.No.5/2 which is the subject matter of the suit.

5. In these circumstances, the trial Court rightly dismissed the application. Hence, this civil revision petition fails and the same is dismissed. However, it is made clear that the observations made by the trial court is only for the disposal of the application. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2015

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N.KIRUBAKARAN, J.,

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To

1. The Ist Additional District Munsif Court, Salem.

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