

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.1534 of 2012

and

M.P.No.1 of 2012

1.Subramani

2.Palaniammal

... Petitioners

vs.

1.A.R.Kandasamy

2.K.Nataraj

3.K.Nandakumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order of the Principal District Munsif Court at Tiruchengode dated 20.01.2012 made in I.A.No.999 of 2011 in O.S.No.213 of 2008.

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.P.T.Asha

M/s.Sarvabhauman Associates

ORDER

Heard Mr.P.Valliappan, learned counsel for the petitioners and Ms.P.T.Asha for M/s.Sarvabhauman Associates, learned counsel for the respondents. The impugned order of the trial court and other documents produced in the form of typed set of papers are also perused.

2. The order dated 20.01.2012 made by the learned trial judge in I.A.No.999/2011 in O.S.No.213/2008 on the file of the trial court, namely Principal District Munsif, Tiruchengode appointing an Advocate-Commissioner to measure the suit property belonging to the petitioners herein as well as the adjacent property belonging to the respondent herein is the subject matter of challenge in the present revision.

3. The above said suit was filed by the petitioners herein/plaintiffs for permanent injunction restraining the respondents herein/defendants from interfering with their peaceful possession and enjoyment of the suit schedule property. The suit is contested by the respondents herein/defendants on the basis of their plea made in the written statement to the effect that no part of the property of the petitioners/plaintiffs was either encroached

upon or sought to be encroached upon and that the suit itself was filed as a vexatious suit.

4. Contending that after getting an ex-parte injunction order and taking advantage of the same, the petitioners herein have planted concrete pillars and put up a barbed wire fence after removing the existing wall and making encroachment upon a portion of the property of the respondents herein, the respondents filed I.A.No.999/2011 for appointment of a Commissioner to inspect the suit property as well as the adjacent property belonging to the respondents herein and measure the same so that the resolution of the issue involved in the suit would become easier.

5. The learned trial judge, after hearing, passed the impugned order dated 20.01.2012 allowing the said petition and appointing an Advocate-Commissioner for the said purpose stated in the petition. Finding fault with the said order, the petitioners, who are the plaintiffs in the above said suit, have approached this court with the present civil revision petition.

6. Admittedly, the petitioners and the respondents are the

owners of the adjacent properties. The suit came to be filed on the basis of their contention that when the demand of the first respondent to sell the suit property for a low price was not conceded by the petitioners, the respondents attempted to trespass into the suit property and cause hindrance to the peaceful possession and enjoyment of the suit property. The respondents herein/defendants have taken a clear stand in their written statement that the suit itself was filed as a vexatious one with a hidden agenda of annexing a portion of the respondents herein with the property of the petitioners.

7. As it is also the contention of the respondents that after the filing of the suit, the petitioners have removed the then existing wall in between the properties of both and put up stone pillars with barbed wire fence encroaching upon a portion of the property of the respondents; that under the said circumstances, the appointment of a Commissioner to note the same and measure the properties to identify the boundary between the two properties, would give a solution to the problem and that the same was the reason why the respondents chose to file the petition for appointment of a Commissioner. The filing of the said petition cannot be said to be malafide. The resistance offered for such a

petition was rightly rejected by the learned trial judge and the order allowing the petition and appointing an Advocate-Commissioner for the said purpose cannot be said to be made in improper exercise of the jurisdiction of the trial court.

8. It is also brought to the notice of the court that after the filing of the revision, the Advocate-Commissioner, thus appointed by the trial court, visited, inspected and measured the suit property belonging to the petitioners and the adjacent property, namely the property belonging to the respondents. In view of the same, this court is of the view that, it shall not be proper for the petitioners to precipitate the matter further by insisting upon an order setting aside the order of the trial court appointing an Advocate-Commissioner for inspecting and measuring the suit property and the adjacent property. The inspection of the Advocate-Commissioner and the measurements taken by him, shall not, in any way, affect the rights of the petitioners or prejudice the petitioners/plaintiffs. The petitioners/plaintiffs shall have the right to file their objections in case the Commissioner's report is found to contain incorrect particulars or exhibit that the Commissioner has exceeded the scope of the warrant issued to him. In view of the availability of the

said course of action to the petitioners, this court is of the view that the order of the trial court dated 20.01.2012 appointing Advocate Commissioner made in I.A.No.999/2011 in O.S.No.213/2008 has got to be sustained.

In the result, the civil revision petition is dismissed. However, it is made clear that the petitioner shall have the right to file objections and seek re-issuance of the warrant, if it is so warranted. There shall be no order as to cost. Consequently, the connected M.P.No.1 of 2012 is closed.

12.01.2015

Index : Yes/No
Internet : Yes/No
asr

To
The Principal District Munsif, Tiruchengode

P.R.SHIVAKUMAR, J.

asr/-

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and

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