

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2016

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Civil Revision Petition (PD) No.1723 of 2016
and
C.M.P.No.9169 of 2016

Krishnamurthy @ Krishnan (deceased)

1.K.Sampoornam
W/o.Late Krishnamurthy @ Krishnan

2.K.Parameswaran
S/o.Late Krishnamurthy @ Krishnan

3.D.Shamugapriya
W/o.A.Thangaraj

4.K.Duraisamy
S/o.Late Krishnamurthy @ Krishnan ... Petitioners

vs

K.S.Subramaniam
S/o.Subbayya Naicker ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the order of learned II Additional District Munsif, Erode, passed in I.A.No.323 of 2015 in O.S.No.397 of 2008, on 20.01.2016.

For Petitioners : Mr.V.Raghavachari

For Respondent : Mr.M.Guruprasad

ORDER

This revision arises against the order of learned II Additional District Munsif, Erode, passed in I.A.No.323 of 2015 in O.S.No.397 of 2008, on 20.01.2016.

2. Petitioners/plaintiffs filed O.S.No.397 of 2008 on the file of learned II Additional District Munsif, Erode, seeking permanent injunction. Petitioners have filed I.A.No.323 of 2015 seeking appointment of an Advocate Commissioner to revisit the suit property to note the physical features and to fix re-survey number. The Court below, under the impugned order, dismissed such application. Hence, this revision.

3. Heard learned counsel for petitioners and learned counsel for respondent.

4. Though several reasons have been afforded by the Court below in dismissing the application, the main reason stated is that the earlier Advocate Commissioner's report had been filed along with sketch and the plaintiffs, if prejudiced, ought to have moved an application seeking rejection of the Advocate Commissioner's report. Instead, they have moved an application seeking further appointment of another Advocate Commissioner. The

contention of the plaintiffs that the Advocate Commissioner has inspected the property and filed his report without informing the plaintiffs, has been negated by the Court below since the report of the Advocate Commissioner informs that the parties duly have been informed of the inspection date as 11.09.2015 and upon the request of plaintiffs, it was postponed to 11.10.2015 and when the plaintiffs requested for further time, the Advocate Commissioner after informing the parties over phone, inspected the property on 11.10.2015. Moreover, the second plaintiff was available at the site during inspection and he has refused to receive notice. The Court below found that no further report of an Advocate Commissioner is necessary.

5. Learned counsel for petitioners submits that it is necessary for the Advocate Commissioner to revisit the property towards informing the present survey number thereof.

6. This Court is of the view that even if the contention of the petitioners of there being a fresh survey number to the property is to be accepted, the same could not be reason enough to interfere with the order of the Court below. This Court finds that the plaint informs the boundaries of the property in respect of which relief is sought by plaintiffs. In case of conflict between survey numbers and boundaries, boundaries will prevail.

The Civil Revision Petition, accordingly, is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

21.06.2016

Index:yes/no
Internet:yes
gm

To
The II Additional District Munsif,
Erode.

C.T.SELVAM, J

gm

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