

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(P.D.) No.179 of 2013

and

M.P.No.1 of 2013

Thangavel (died)

1.Tmt.T.Rathinam

2.T.Boopathy

3.Renuka

... Petitioners/Plaintiffs

Vs.

1.Tmt.Jothimani

2.Sri.E.Chandrasekaran

...Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 20.01.2012 in I.A.No.1543 of 2011 in O.S.No.197 of 2006 on the file of the District Munsif Court, Tiruppur.

For Petitioners : Mr.S.Arjun
for Mr.D.Muthu Selvam

For Respondents : Mr.K.S.Kaviarasu

ORDER

This Civil Revision Petition is filed to set aside the fair and final order dated 20.01.2012 in I.A.No.1543 of 2011 in O.S.No.197 of 2006 passed by the District Munsif, Tiruppur.

2.The petitioners are the plaintiffs in the suit and the suit is for declaration and permanent injunction. The petitioners/plaintiffs have filed an application in I.A.No.1543 of 2011 seeking appointment of an Advocate Commissioner under Order 26, Rule 9 CPC and the Trial Court by considering the facts and circumstances of the case made a categorical finding that the suit is for Declaration of Title for the entire suit scheduled property as well as Mandatory Injunction directing the defendants to remove their unlawful construction put up in the suit property and for delivery of vacant possession. The plaintiff in the plaint has specifically described the disputed property as 4 items with specific extent and boundaries as well as survey numbers with their respective sub-divisions. However, the exact measurement of the portion alleged to have been encroached by the defendants are also described in the plaint. On a conjoint reading of the plaint and written statement, it is unambiguous that there is no dispute between the respective parties regarding identity, location, extent, measurements and four boundaries of the suit scheduled property, which is in dispute. It is only with regard to the title of the property and therefore, the Trial Court has rejected the petition seeking appointment of an Advocate Commissioner.

3.The findings of the Trial Court is that, when the plaint and

the written statement are unambiguous with regard to the description of the suit scheduled property, there is no necessity of appointing an Advocate Commissioner, which will not serve any purpose and the present petition is filed only with an idea to improve their case and such an intention of the parties can never be encouraged by the Courts. Accordingly, this Court is not inclined to accept the grounds raised in the Revision Petition and the same is devoid of merits.

4. In the result, the order passed in I.A.No.1543 of 2011 in O.S.No.197 of 2006 by the learned District Munsif, Tiruppur is confirmed and this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. There is no order as to costs.

09.12.2016

Index : Yes.
Internet : Yes.
rm

To

The District Munsif,
Tiruppur.

S.M.SUBRAMANIAM,J.

rm

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