

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:29.02.2016

CORAM

THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR

C.R.P.[PD] No.654 of 2016

and

C.M.P.No.3346 of 2016

Ammasai Gounder (Died)

1. Rathinam

2. Boopathy

... Petitioners

Vs

1. Eswaran

2. Murugesan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 07.12.2015 made in I.A.No.394 of 2015 in O.S.No.357 of 2010 on the file of the learned I Additional District Munsif Court, Bhavani by allowing this Civil Revision Petition.

For Petitioner : Mr.N.Manokaran

ORDER

The submissions made by Mr.N.Manokaran, learned counsel for the petitioners are heard.

2. The impugned order of the trial Court, grounds of revision and other papers produced in the form of typed set of papers are also perused.

3. The plaintiffs in O.S.No.357 of 2010 pending on the file of the I Additional District Munsif, Bhavani, are the petitioners herein. They have filed the suit against the respondents herein for a bare injunction in respect of the suit property. In the said suit, petitioners herein / plaintiffs filed an earlier application I.A.No.1152 of 2010 for appointment of Commissioner to make a local visit of the suit property, measure the same and submit a report and plan. The said petition was allowed and an Advocate Commissioner was appointed who, along with the Surveyor, inspected the property, measured the same and submitted a report and plan with lineal measurements as well as area. Nearly after three years, the petitioners seem to raise an objection to the report stating that the Commissioner did not measure the suit property, the defendants' property and the property allegedly retained by the common vendor of the plaintiffs and the defendants, with reference to their respective title deeds and that hence warrant should be re-issued to the Commissioner with a direction for taking

measurements of the properties of the parties with reference to their title deeds.

4. The learned trial Judge, after hearing, dismissed the application filed by the petitioners herein, namely, I.A.No.394 of 2015 seeking an order of re-issuing the warrant to the Commissioner to again visit and measure the suit properties. The said order of the learned trial Judge dated 07.12.2015 is made the subject matter of challenge in the present Civil Revision Petition.

5. The suit has been filed by the petitioners herein not for the recovery of any portion allegedly encroached upon by the defendants or for the fixation of the boundary between the properties of the plaintiffs and the defendants. On the other hand, they have filed the suit for a bare injunction giving a description of property in the schedule in accordance with the description provided in the sale deed under which they purchased the property from the erstwhile owner. The defendants are also the purchasers of the other portion of the property from the very same vendor. The Commissioner appointed by the trial Court to make a local visit and submit a report, in fact, measured the properties of both the plaintiffs and the defendants and

submitted a report along with a plan showing the measurements of the properties admittedly in possession of the parties to the suit. Suppose, the petitioners have come forward with a plea that the lineal measurements given in the plan and in the report do not conform to the area worked out by the Commissioner, the petitioners shall have a good case for seeking re-issuance of the warrant to the Commissioner.

6. On the other hand, the petitioners contend that the measurements noted by the Commissioner are not in conformity with the measurements found in the sale deed relied on by the plaintiffs and on that ground alone, the petitioners sought the re-issuance of warrant to the Commissioner to re-visit the property and measure the properties in accordance with the measurements found in the title deeds of the parties concerned. The suit itself having been filed for injunction, which relief can be granted only in respect of the portion in the possession of the plaintiffs, the petitioners cannot be permitted to enlarge the scope of the suit by seeking the re-issuance of warrant to the Commissioner to find out whether the property in possession of the plaintiffs is coextensive with the area found in their sale deed or not?.

7. The trial Court, on proper consideration of the prayer and the objection raised, arrived at a correct conclusion that the prayer for re-issuance of warrant to the Commissioner should be negatived. This Court does not found any defect or infirmity, warranting interference with the same under Article 227 of the Constitution of India. There is no merit in the revision and the revision does not even merit admission.

8. In the result, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

29.02.2016

Index: Yes/No
Internet: yes/No

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To

The I Additional District Munsif Court,
Bhavani

P.R.SHIVAKUMAR, J

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