

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1819 of 2017
& C.M.P.No.8724 of 2017

1.Velmurugan
2.Arul Prakasam
3.Indira
4.Arul Jothi

.. Petitioners

Vs.

Anbazhagan

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 29.11.2016 made in I.A.No.451 of 2014 in O.S.No.90 of 2014 on the file of the District Munsif Court, Panruti.

For Petitioners : Mr.S.Kadarkarai

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 29.11.2016 made in I.A.No.451 of 2014 in O.S.No.90 of 2014 on the file of the District Munsif Court, Panruti.

2.The petitioners are the defendants and respondent is the plaintiff in O.S.No.90 of 2014. The respondent filed the suit for declaration of title and injunction and along with the suit, the respondent filed I.A.No.451 of 2014 for appointment of an Advocate Commissioner to inspect the suit property and measure the same with the help of surveyor and file his report. The petitioners filed written statement on 17.03.2015 and are contesting the suit.

3. According to the respondent, the suit is an agricultural land, while the petitioner is claiming that the same is cart track.

4. The petitioner filed counter affidavit and submitted that the petitioners has earlier filed O.S.No.73 of 2014 against the respondent and others for permanent injunction. In the said suit, the petitioner filed I.A.No.372 of 2014 for appointment of an Advocate Commissioner. The Commissioner was appointed, who inspected the property along with the help of Surveyor and filed his report.

5. The respondent filed an application in I.A.No.872 of 2015 to scrap the report of the Advocate Commissioner. The said application

was dismissed, against which, the respondent has filed C.R.P.No.1272 of 2016 before this Court and the same is pending. In view of the report filed by the Advocate Commissioner in O.S.No.73 of 2014, the present application for appointment of Advocate Commissioner is not necessary.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and report of the Advocate Commissioner filed in O.S.No.73 of 2014, held that the Advocate Commissioner's report relates to C schedule property in the said suit and the suit survey number is not mentioned in the report and plan. From the plan and report, it is not clear that whether the suit property is same as the schedule mentioned property in the present suit. The Advocate Commissioner's report filed in O.S.No.73 of 2014 cannot be accepted in entirety. For the above reasons, the learned Judge allowed the application and appointed Advocate Commissioner.

7. Against the order dated 29.11.2016 made in I.A.No.451 of 2014, the present civil revision petition is filed by the petitioners.

8. Heard the learned counsel appearing for the petitioners and perused the materials available on record.

9. The grievance of the petitioners is that in earlier suit filed by the petitioners, Advocate Commissioner was appointed to inspect the suit schedule property with the help of the surveyor. The learned Judge has not properly considered the said Commissioner's report and erroneously held that it is not clear whether the property mentioned in the Advocate Commissioner's report relates to the suit schedule property.

10. A reading of the impugned order clearly shows that the learned Judge has compared the description of the property in the Advocate Commissioner's report and plan with the description of the property to the schedule of property to the plaint in the present suit. After considering the report of the Advocate Commissioner properly, the learned Judge has held that it cannot be accepted in entirety. The learned Judge considering all the materials available on record allowed the application by giving cogent and valid reasons. There is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 29.11.2016.

11. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.06.2017

Index : Yes/No

dm/kj

To

The District Munsif Court,
Panruti,
Cuddalore District.

V.M.VELUMANI, J.

dm/kj

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