

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4182 of 2010
&.M.P.No.1 of 2010

1.Lakshmanan
2.Alamelu

.. Petitioners

Vs.

1. Govindammal
2. Marimuthu Gounder
3. Sithayammal

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.04.2010 made in I.A.No.315 of 2010 in O.S.No.679 of 2008 on the file of the Principal District Munsif, Salem.

WEB COPY

For Petitioners : Mr. M. Saravana Kumar

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed against the fair and decretal order dated 09.04.2010 made in I.A.No.315 of 2010 in O.S.No.679 of 2008 on the file of the Principal District Munsif, Salem.

2. The petitioners are the defendants 2 & 3, first respondent is the first defendant and the respondents 2 & 3 are the plaintiffs in O.S.No.679 of 2008 on the file of the Principal District Munsif, Salem. The respondents 2 & 3 have filed suit for permanent injunction, restraining the petitioners and first respondent from interfering with their peaceful possession and enjoyment of the suit property, to declare the sale deed dated 26.02.2008 bearing document No.450 of 2008 and rectification deed dated 08.04.2008 bearing document No.812 of 2008 as null and void, unenforceable and not binding on the respondents 2 & 3 and to declare title of the respondents 2 & 3 to the suit property. The petitioners have filed written statement on 04.07.2008 and Additional written statement on 05.02.2010 and are contesting the suit. Trial commenced.

The respondents 2 & 3 have let in evidence and closed their side. Along with the suit, the respondents 2 and 3 filed an application for appointment of an Advocate Commissioner to inspect and measure the suit property. An Advocate Commissioner was appointed. He inspected and measured the suit property and filed his report to the Court. Subsequently, the respondents 2 and 3 filed I.A.No.315 of 2010 for a direction to the same Advocate commissioner to revisit the suit property for making local investigation of the suit property for the purpose of taking measurements of the properties by fixing the boundaries with reference to sale deed dated 29.04.1988 with the help of qualified Surveyor or a Government surveyor and for a direction to file his report.

3. The petitioners filed counter affidavit and opposed the said application and submitted that the respondents' vendor had purchased only 15 cents of the land, but she sold 25 cents of the land to the respondent, including 10 cents of adjoining land for which she is not the owner. The respondents are in the possession of only 15 cents of the property and not to the extent of 25 cents.

The respondents have not given any reason for appointment of Advocate Commissioner to revisit the suit property without scraping the earlier report of the Advocate Commissioner.

4. The learned Judge, considering the materials on record, appointed the Advocate Commissioner on the ground that there is a dispute with regard to 15 cents of land as both petitioners and respondents 2 & 3 are claiming title over the said property. The learned judge has stated that the respondents 2 & 3 have filed suit for injunction.

5. Against the said order dated 09.04.2010 made in I.A.No.315 of 2010 in O.S. No.679 of 2008, the present civil revision petition is filed by the petitioners.

6. Heard the learned counsel appearing for the petitioners and perused the materials available on record. Though notice was served on the respondents 1 to 3 and their names are printed in the cause list, there is no representation either in person or through counsel.

7. From the materials available on record, it is seen that the

respondents 2 & 3 have filed suit for permanent injunction and declaration. Earlier the Advocate commissioner has been appointed and he has filed the report. After commencement of the trial and examination of the second respondent, the respondents 2 & 3 have filed the present application for a direction to the same Advocate Commissioner to revisit the suit property and measure the same with the help of surveyor. The respondents 2 & 3 have not given any reason for such direction and the respondents have not sought for any order scraping the report of the Advocate Commissioner filed earlier and has not stated as to how the said report is incorrect. From the impugned order of the learned Judge, it is seen that the learned Judge has not properly considered the relief sought for by the respondents 2 & 3 in the suit as well as the contentions of the petitioners in the counter affidavit filed in the present application. The respondents 2 & 3 have filed the suit for the injunction and declaration, whereas the learned Judge has stated that the suit is for injunction. The dispute between the parties is only with regard to an extent of 10 cents. The respondents are claiming title over 25 cents, whereas the petitioners are contending that the respondents' vendor purchased only 15 cents and she has no right over 25 cents.

V.M.VELUMANI, J.

lbm

8. The learned Judge has not considered the facts properly and appointed Advocate Commissioner to revisit the said property. The reasons given by the learned Judge are not valid and order of the learned Judge is liable to be set aside for non application of mind and for non exercising of power conferred on him properly.

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

23.08.2017

Index : Yes/No
lbm/gsa

To

The Principal District Munsif,
Salem.

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