



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.289 of 2017

1.Subramaniyapillai
2.VadiveluPillai
3.Rajamanickam

: Petitioners

Vs.

1.Karuppuchami
2.The Panchayat President,
Therku Sandhanur Village,
S.Karaikudi Post,
Manamadurai Taluk,
Sivagnagai District.

: Respondents

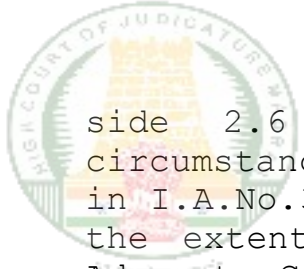
Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India praying to allow the Civil Revision Petition setting aside the order and decreetal order passed in I.A.No.339 2016 in O.S.No.2 of 2015 on the file of the learned Principal District Munsif, Manamadurai, dated 22.11.2016.

For Petitioner : Mr.D.P. Sundararaj

O R D E R

This Civil Revision Petition is filed to set aside the order and decreetal order passed in I.A.No.339 2016 in O.S.No.2 of 2015 on the file of the learned Principal District Munsif, Manamadurai, dated 22.11.2016.

2. The revision petitioners, who are the plaintiffs filed suit in O.S.No.2 of 2015 on the file of the learned Principal District Munsif, Manamadurai, for declaration and recovery of possession. In the plaint, the petitioners stated that the respondents have encroached 4 cents of the land belonging to the plaintiffs. Along with the suit, the petitioners filed I.A.No.309 of 2015 for an appointment of Advocate Commissioner to inspect the suit property. The said application was allowed and the Advocate Commissioner inspected and measured the suit property and filed his report. In the report the Advocate Commissioner stated that the first respondent has encroached northern portion to an extent of 22 meters and southern portion to an extent of 22 meters and Eastern



side 2.6 meters and Western side 3.4 meters. In the circumstances, the petitioners have filed, the present application in I.A.No.339 of 2016 for amendment of the plaint with regard to the extent of the encroachment by the respondents, as per the Advocate Commissioner's report. The respondents objected the same on the ground that the memo given by the respondents for measuring property, based on the UDR Survey was rejected by the Advocate Commissioner and he measured the property only based on the Natham Survey and the northern boundary of the property is not mentioned in the revenue records, only on the assumption the Advocate Commissioner has given a measurement from the Southern portion of the suit property. The respondents already filed objection to the report of the Advocate Commissioner and stated that the petitioners cannot seek amendment of the plaint, based on the report of the Advocate Commissioner.

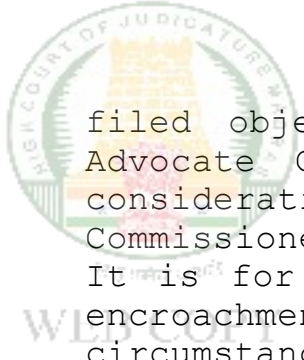
3. The learned Judge considering the averments made in the affidavit and counter affidavit and Advocate Commissioner's report dismissed the application holding that the Advocate Commissioner report cannot be taken for amendment of prayer, unless the Commissioner report is accepted as a whole and respondents filed objections to the Advocate Commissioner's report.

4. Against the said order of dismissal, the present Civil Revision Petition has been filed.

5. The learned counsel appearing for the petitioners reiterated the averments made in the affidavit filed in support of the petition and the grounds raised in the Civil Revision Petition and submitted that the learned Judge failed to see that the amendment sought for is pre trial amendment and erred in dismissing the application for amendment. In support of his contention, the learned counsel for the petitioners relied on the Judgments reported in 2016(2)MWN(Civil) 505 (S. Sukumari Vs. Arulmigu Sri Nalla Pichayee Sri Veerappasamy Kovil Natham, rep. through its Hereditary Administrator, N.S. Eswaran) and 2006(5) CTC180 (Subhaga and others Vs. Shobha and others), submitted that it is only pre trial amendment and the pre trial amendment can be ordered at any stage and prayed for allowing the Civil Revision Petition.

6. I have heard the learned counsel appearing for the petitioners and perused the materials available on record.

7. From the order of the learned Judge it is seen that the petitioners specifically stated that the Advocate Commissioner measured the property with the help of the Surveyor and found out that the respondents encroached 4 cents of the suit property. <https://hcnwires.edu.in/hcnwires/> the Advocate Commissioner's report, the petitioners are seeking amendment. The learned Judge held that Advocate Commissioner's report not attained finality. The respondents



filed objections to the Advocate Commissioner's report and an Advocate Commissioner's report has to be decided taking into consideration of the objection of the respondents. The Advocate Commissioner's report cannot be used for collecting the evidence. It is for the petitioners to prove exact extent of the alleged encroachment by letting in acceptable evidence. In the circumstances, the Judgments relied on by the learned counsel for the petitioners are not applicable to the facts of the present case. The Courts always have power to grant decree for the lesser extent, even if the petitioners are prayed for relief with regard to larger extent.

8. In the circumstances, the learned Judge has considered all the materials on record in proper perspective and has given cogent and valid reasons for dismissing the I.A.No.339 2016 in O.S.No.2 of 2015. Further the learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.

9. In the result, the Civil Revision Petition is dismissed. No costs.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar

trp

To

The Principal District Munsif,
Manamadurai.

COPY TO:

THE RECORD KEEPER, V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1cc to Mr.D.P.SUNDARARAJ, Advocate Sr.No. 8387

JAM/17.03.17 / PM-PN/ 3P-4C

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