



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.378 of 2017 (PD)

and

C.M.P.(MD)No.1855 of 2017

R.Ponnusamy (died)

1.A.Selvam

2.A.Ganesan

3.A.Murugesan

...Petitioners/Petitioners Nos.3 to 5/
Appellants Nos.3 to 5

Vs

1.Tamilselvi

Dharmalingam (Died)

2.Ganesan

3.A.Manoharan

4.A.Velu

5.Rajeswari

6.Saravanan

7.Muthuammal

...Respondents/Respondents/
Respondents

8.A.Baladoss

...Respondent/2nd Petitioner/
2nd Appellant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to allow the above Civil Revision Petition by setting aside the order and decreetal order, dated 30.09.2016 passed in I.A.No.92 of 2012 in A.S.No.70 of 2008 in O.S.No.134 of 2005, on the file of the Sub Court, Srivilliputhur, Virudhunagar District.

For Petitioners : Mr.S.Alagusundar

ORDER

The petitioners have filed this Civil Revision Petition to set aside the order and decreetal order, dated 30.09.206 passed in I.A.No.92 of 2012 in A.S.No.70 of 2008 in O.S.No.134 of 2005, by the Sub Court, Srivilliputhur, Virudhunagar District.

2.The petitioners are the appellants 3 to 5 in first appeal in A.S.No.70 of 2008. The petitioners along with two others filed suit in O.S.No.134 of 2005 before the learned Additional District, Srivilliputhur for declaration in respect of item Nos.1 & 2 of the



property and mandatory injunction in respect of Item No.3. After contest, the suit was dismissed by the judgment and decree, dated 05.08.2008. Against that the petitioners along with two others filed appeal in A.S.No.70 of 2008. In the appeal, the petitioners and two others filed I.A.No.92 of 2012 for appointment of Advocate Commissioner to measure the property with the help of Surveyor.

3.The first respondent filed counter and opposed the said application on the ground that the petitioners and others have not stated any reason for appointment of Advocate Commissioner. There is no dispute with regard to the suit properties and measurement of the property. The respondents 1 to 7 submitted that the petitioners and others have admitted that third item of the property was put up in the year 1986 itself.

4.The learned Judge considering the affidavit and counter affidavit and materials on record, dismissed the application on the ground that the petitioners and others have failed to prove their title to item Nos.1 & 2 and failed to file an application for appointment of Advocate Commissioner in the suit.

5.Against the said order of dismissal made in I.A.No.92 of 2012, the petitioners have come out with the present Civil Revision Petition.

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

7.From the materials on record, it is seen that it is an admitted case of the parties that third item of the suit property i.e., compound wall was put up by encroaching the properties of petitioners. The learned Judge has dismissed the suit holding that the petitioners and others have failed to prove their title to item Nos.1 & 2 of the suit properties. The said judgment is being challenged in first appeal in A.S.No.70 of 2008. In view of the fact that the petitioners have to prove their title and especially that judgments of the trial Court is liable to be set aside, the petitioners are not entitled to appointment of Advocate Commissioner at this stage. It is pertinent to note that there is no dispute with regard to identity and measurement of the suit property. It is well settled that when there is no dispute with regard to suit property, Advocate Commissioner need not be appointed. The first appellate Judge considering all the facts and materials on record has rightly dismissed the application. There is no illegality or irregularity warranting interference by this Court.



8. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

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/True Copy/

Sd/-
Assistant Registrar(C)

Sub Assistant Registrar

To

The Sub Judge, Srivilliputhur,
Virudhunagar District.

+1cc to M/s. S.ALAGUSUNDAR Advocate in SR. No.10667

AM

JS/SKN/28.03.2017/3P-3C

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