



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.05.2017
(Reserved on 25.04.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.596 of 2017
and
CMP(MD) Nos.2660 and 4032 of 2017

1) Marimuthu
2) Vijayalakshmi
Ramasamy

... Petitioners

vs.

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.525 of 2016 in O.S.No.187 of 2013 dated 23.11.2016 by the District Munsif Court, Srivilliputhur.

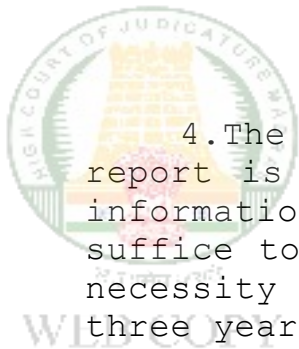
For Petitioner : Ms.Lakshmi Gopinathan for
M/s.Polax Legal Solutions
For Respondent : Mr.H.Arumugam

ORDER

This revision petition is directed against the dismissal of the application filed under Order 26 Rule 9 CPC by the defendants in the suit.

2.The case of the revision petitioners/defendants is that the suit is filed against them seeking easementary right of way, air and light in respect of the suit schedule property. In the said suit, Advocate Commissioner was appointed by the Court in the year 2013 to note down the physical features of the suit property with the assistance of a Surveyor. Accordingly, the Advocate Commissioner visited the property on 17.08.2013 but filed his report only on 06.07.2015. The said report does not contain the survey number or the actual measurement. Further, it has not provided any specific physical feature of the suit property so as to assist the Court to decide the dispute. Therefore, application under Order 26 Rule 9 CPC was filed to appoint a fresh Advocate Commissioner to visit the suit property and measure the property with the help of a Taluk Surveyor and Village Administrative Officer.

3.The Trial Court taking note of the earlier report has declined the relief of the revision petitioner, hence, the present revision petition.



4.The counsel for the respondent submitted that earlier report is not a truncated report. It carries all the necessary information. The sketch and the report of the Commissioner are suffice to decide the dispute between the parties and there is no necessity for appointment of a fresh Advocate Commissioner after three years.

5.Perusal of the Advocate Commissioner report and the sketch filed by him obviously lack details. It does not contain survey number of the lands of the respective parties. Furthermore, the sketch as such does not carry any boundary stone mark. It also does not indicate that it has been prepared with the help of a qualified Surveyor. The measurements and physical features as shown in the sketch are incomplete and bereft of details. Therefore, there is substance in the ground raised by the revision petitioners.

6.If the property is not properly measured as per the documents, the question whether the plaintiff has any right to have access in the defendants' land to whitewash and maintain the wall as well as whether he is entitled for any easementary right of way, air and light cannot be ascertained.

7.Therefore, this Civil Revision Petition is allowed and the order passed in I.A.No.525 of 2016 in O.S.No.187 of 2013 dated 23.11.2016 by the District Munsif Court, Srivilliputhur, is set aside. I.A.No.525 of 2016 is remitted back to the Trial Court for fresh consideration. The Trial Court is directed to hear the parties afresh and appoint a new Advocate Commissioner, if necessary with specific warrant to visit the disputed property and note down the physical features and to measure it with the help of a qualified Surveyor and file report. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Srivilliputhur.

+1 cc to M/s.Polax Legal Solutions, Advocate SR.No. 55658

Pre-Delivery order made in
CRP(PD) (MD) No.596 of 2017
05.05.2017