

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 04.04.2018

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P.(PD) No. 1036 of 2018& C.M.P.No.5461 of 2018

1. R.Easwaran

2. T.V.Rajasekaran

... Petitioners

Vs.

1.S.Sarulatha

2. T.V.Veerabadrachettiar

3. T.V.Veerappan

4. T.V.Shanmugham

5. T.V.Balu

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India pleaded to against the Fair and Decreetal order dated 02.02.2018 made in I.A.No.819 of 2017 in O.S.No.312 of 2013 on the file of Additional District Munsif Court, Tirupathur, Vellore District.

For Petitioners : Mr.D.Baskar

ORDER

This Civil Revision petition has been filed by the petitioners/plaintiffs, challenging the order passed in I.A.No.819 of 2017 in O.S.No.312 of 2013 on the file of the Additional District Munsif, Vellore at Tirupathur, whereby the petitioners' request for appointment of an Advocate Commissioner to file a report with regard to the demarcation of the suit schedule property with the help of the surveyor, has been dismissed by the Court below.

2. Originally, during October 2012 the first respondent herein /first defendant has filed a suit in O.S.No.292 of 2012 against the petitioners herein seeking the relief of declaration and permanent injunction and other reliefs in respect of the suit property. Subsequently on 20.12.2013 the suit in O.S.No.312 of 2013 has been filed by the petitioners herein seeking the relief of mandatory injunction to remove all the buildings, petroleum dispensing pumps, underground tanks etc., and other structures put up in the suit land for running the petrol bunk in the suit land.

3. Heard both sides.

4. A perusal of the materials available on record would show that as per the partition deed dated 05.07.1970 the extent available with the defendants was 1-15 acre. The plaintiffs had taken advantage of mentioning 1-15 acre in the deed of partition G-schedule. Subsequently now the petitioners have filed suit for mandatory injunction. Hence, it is for the plaintiffs to prove the said extent. Since the suit is filed beyond the period of three years and after construction and installation of petrol pump, the same is time barred. The Court below has taken the said reasonings on record and has rightly rejected the petition seeking for appointment of an Advocate Commissioner.

5. The Court below has stated that the petitioners have to prove their case by producing oral and documentary evidence and not through Advocate Commissioner. The plaintiffs are adopting the delaying tactics in conducting their case. The reasonings recorded by the Court below are based on factual findings and therefore the same cannot be interfered by this Court, unless the same is perverse.

6. This Court is of the opinion that the facts can very well be established by the petitioners by filing revenue records and other relevant documents before the Court below. The grounds raised by the petitioners have no legs to stand, since there is no illegality or infirmity in the order passed by the Trial Court. Hence, this Petition has no merits and it is liable to be dismissed.

7. In the result, the Civil Revision petitioner is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index:Yes/No

Speaking order / Non speaking order

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P.VELMURUGAN, J.,

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To

The Additional District Munsif,
Tirupathur, Vellore District.



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