

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 26.02.2018

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P.(PD) No.3005 of 2016 and C.M.P.No.15159 of 2016

1 A.V.Sargurunathan  
2 A.V.S.Parimala  
3 A.V.Thirumalaimurugan ... Petitioners

Vs.

1 G.Sagunthala  
2 K.Santhamani  
3 Jayasubamangalam  
4 G.Mathavamohan  
5 M.Kanjanamalai  
6 G.Lakshmikandhan ... Respondents

This Civil Revision Petition is filed under section 227 of Constitution of India against the order dated 22.07.2016 made in I.A.No.201 of 2016 in I.A.No.1265 of 2010 in O.S.No.379 of 2010 on the file of the I Additional District Munsif, Bhavani.

For Petitioners : Mr.R.Nalliyappan  
For Respondents : Mr.Sugantham for  
N.Manokaran

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ORDER

According to the petitioner, the petitioner has filed a suit in

O.S.No.379 of 2010 for permanent injunction. The respondent has filed an

application in I.A.No.1265 of 2010 to appoint an Advocate Commissioner to measure the suit Well with the assistance of District Surveyor and submit a report. Advocate Commissioner inspected the suit property on 23.5.2013 along with Surveyor and submitted a report. Both the parties filed objection against the report submitted by the Advocate Commissioner. The petitioner has filed I.A.No.201 of 2016 to re-issue commission warrant to the same Advocate Commissioner to measure the suit Well with necessary directions. The court below dismissed the application by stating that the petitioners cannot be permitted to collect evidence through Advocate Commissioner. Challenging the said order, the present Civil revision petition has been preferred before this Court.

2 According to the petitioner, the instant application has been filed by stating that the Commissioner has failed to note down the physical features of the suit property and failed to measure the property in the light of town survey documents which would clearly reveal that suit Well situated within T.S.No.61 and 61/1, whereas the report filed by the Advocate Commissioner shows that the property situated at T.S.No.61/2 which is contrary to the judgment passed in favour of the petitioner in O.S.No.119 of 2006. Therefore, he filed the present application to reissue commission warrant to the same Commissioner to measure the properties in T.S.No.60, 61/1, 61/2. The learned counsel for the petitioners relied on the decision of this Court in S.DEIVATHAL AND OTHERS VS. A.PALANISAMY KOUNDER AND

ANOTHER [2013 (1) MWN (CIVIL) 611] and SEMITTA KOUNDER AND ANOTHER VS. MURUGESAN [2016 (6) CTC 66].

3 After considering the contention of the parties, the court below dismissed the application by holding that there is no dispute with regard to identity of the property. The dispute is only in respect of the measurement of Well exist and on the earlier occasion when the Advocate Commissioner inspected the property, the property has not been properly identified, the petitioner would state that the measurement was not properly made. But, the court below has relied upon the decision of this Court in C.RAJENDRA KUMAR VS. N.BADRINATH (C.R.P.(PD) No.4365 of 2015 dt.21.1.2016) to state that the petitioner cannot collect evidence through Advocate Commissioner and dismissed the application as not maintainable.

4 It is settled legal position that plaintiff must prove his case on the basis of the oral and documentary evidence. Therefore, factual dispute with regard to total extent of property, etc. have to be established by both the parties at the time of trial in the suit and further the aforesaid fact is not disputed earlier, suit filed in O.S.No.119 of 2006 and decree has been passed on 19.4.2006. Subject matter of the present suit property, also included in the aforesaid suit. Earlier, application in I.A.No.1265 of 2010 has been filed by the respondent for appointment of Advocate Commissioner and Advocate

Commissioner inspected the suit property and submitted a report. Objection on the report of the Advocate Commissioner also has been filed by both the parties. Therefore, the petitioners/plaintiffs have to prove their case through oral and documentary evidence at the time of trial in the suit. Therefore, the present application filed by the petitioners is not maintainable and the same is unsustainable. Therefore, there is no error or illegality in the order passed by the court below.

5 In fine, the Civil revision fails and accordingly Civil Revision petition is dismissed. However, it is open to the petitioner to file appropriate application before the court below to examine the Taluk Surveyor, at the time of trial in the suit, under the provisions of law. No costs. Consequently, connected miscellaneous petition is also closed.

26.02.2018

Speaking/Non Speaking order

Index: Yes/No

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To

The I Additional District Munsif, Bhavani.

D.KRISHNAKUMAR, J.

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