



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. PD.(MD)Nos.2354 to 2356 of 2017

and

C.M.P.(MD).No.11326 of 2017

1.Parvathy

2.G.Kamalahasan

... Petitioners /
Plaintiffs

Vs.

1.Lakshmi

2.G.Chidambaram

... Respondents /
Defendants

COMMON PRAYER: Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal orders in I.A.Nos.256 to 258 of 2017 in O.S.No.96 of 2014, dated 11.10.2017, by the learned District Munsif, Sivagangai.

For Petitioners in
all the petitions

: Mr.V.Raghavachari

COMMON ORDER

Challenging the dismissal orders passed by the learned District Munsif, Sivagangai, in I.A.Nos.256 to 258 of 2017 in O.S.No.96 of 2014, dated 11.10.2017, the revision petitioners/plaintiffs have filed these civil revision petitions.

2. The petitioners / plaintiffs have filed a suit in O.S.No.96 of 2014 on the file of the District Munsif Court, Sivagangai, for the relief of declaration that the suit property is common to the plaintiffs and the defendants, and for mandatory injunction against the 1st defendant to maintain the property as found in the registered partition deed of the year 1974. The 1st respondent / 1st defendant has also filed his written statement. Pending suit, the petitioners/plaintiffs have filed an application in I.A.No.317 of 2016 for appointment of an Advocate Commissioner and accordingly, an Advocate Commissioner was appointed and after inspecting the suit property, he filed a report.

3. While so, after the commencement of trial, the revision petitioners / plaintiffs have filed an application in I.A.No.256 of 2017 in O.S.No.96 of 2014 for amendment of plaint stating that the defendants have obtained patta for the common lane in question and



taking advantage of grant of patta, the 1st defendant would encroach upon the property and alter the physical features. The revision petitioners / plaintiffs have also filed I.A.Nos.257 and 258 of 2017 for scrapping the Advocate Commissioner's report and for appointment of a new Advocate Commissioner, stating that the Advocate Commissioner has failed to measure the property with the help of Engineer and to mention the precise measurements. The 1st respondent / 1st defendant has also filed separate counter affidavits opposing these applications.

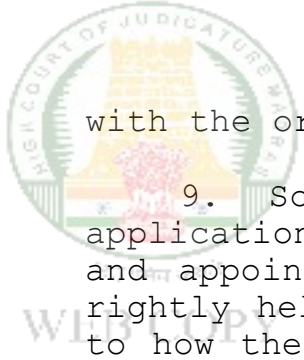
4. After hearing both sides, the Court below, by way of separate orders, dismissed those applications. I.A.No.256 of 2017 was dismissed by the Court below on the grounds that (a) the 1st respondent has not obtained any patta for common lane and she has obtained patta only based on the Municipal Survey Sketch; (b) there is no *prima facie* case made out by the petitioners for amendment of plaint; (c) the amendment would change the nature of the suit; (d) in order to prolong the matter, they have filed this application.

5. I.A.No.257 of 2017 was dismissed by the Court below on the ground that (a) without any specific averments as to how the measurements are wrong, the petitioners cannot seek for scrapping the Commissioner report; (b) as there is no prayer in the plaint, with regard to the damages caused to the building, the Commissioner cannot be expected to assess the damage and file his report; (c) there is no *prima facie* case made out by the petitioners for scrapping the report; (d) in order to prolong the matter, they have filed this application.

6. I.A.No.258 of 2017 was also dismissed by the Court below on the ground that there (a) the measurements can be clarified only during the course of examination of witnesses and not by appointing an Advocate Commissioner (b) there is no *prima facie* case made out by the petitioners for appointment of a new Commissioner; (c) in order to prolong the matter, they have filed this application.

7. The learned counsel for the petitioners reiterated the averments made in the interim applications.

8. The dispute is only with regard to the common lane. Admittedly, the petitioners have filed the amendment application after the commencement of trial. As per Order VI Rule 17 of the Code of Civil Procedure, even after the commencement of trial, the application for amendment of plaint can be allowed, if the Court comes to the conclusion that in-spite of due diligence, the party could not have raised the matter before the commencement of trial. From the perusal of the records, it is evident that the petitioners had not been able to satisfy the said condition. Further, the ground on which the petitioners sought for such amendment is that the defendants have obtained patta for the common lane. But, the first defendant has fairly submitted that she has not obtained patta for the common lane. This Court does not find any reason to interfere



with the order passed by the Court below in I.A.No.256 of 2017.

9. So far as the orders passed in the other interim applications ie., for scrapping of Advocate Commissioner's report and appointment of a new Advocate Commissioner are concerned, as rightly held by the Court below, without any specific averments as to how the measurements are wrong, the petitioners cannot seek for scrapping the Commissioner report and consequently, seek for appointment of a new Advocate Commissioner. This Court does not find any reason to interfere with the orders passed by the Court below in I.A.Nos.257 and 258 of 2017 also.

10. In view of the above, all the Civil Revision Petitions are dismissed at the stage of admission itself. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The District Munsif,
Sivagangai.

+3cc to Mr.V.RAGHAVACHARI,Advocate,SR.40211

C.R.P. PD.(MD)No.2354 to 2356 of 2017
03.01.2018

GCG

KK/GT/SAR 2/30.01.2018/ 3P- 5C/