

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2019

CORAM

THE HONOURABLE Ms.JUSTICE P.T.ASHA

CRP.No.346 of 2019
and
C.M.P.No.2472 of 219

1.S.Perumal
2.S.Munusamy
3.S.Lakshmi
4.S.Ramasamy
5.T.Santhi
6.T.Tamilarasi
7.P.Janaki
8.P.Jeeva
9.P.Deepa

...Petitioners/Plaintiffs/Petitioners

Vs

1.Dr.V.Manonmani
2.V.Vimal

..Respondents/Defendants/Respondents

Prayer: - Civil Revision Petition filed under Article 227 of the Constitution of India to allow the civil revision petition and set aside the order and decree passed in I.A.No.71 of 2018 in O.S.No.73 of 2018 dated 24.04.2018 on the file of District Munsiff cum Judicial Magistrate Court, Valappady.

For Petitioner : Mr.S.P.Yuaraj

O R D E R

The above Civil Revision Petition is filed challenging the order of the learned District Munsif cum Judicial Magistrate, Valappady, in I.A.No.71 of 2018 in O.S.No.73 of 2018 in and by which, the learned District Munsif has dismissed the application filed by the petitioners under the provision of Order 26 Rule 9 r/w section 151 of CPC. The petitioners/plaintiffs had filed a suit for the recovery of possession against the defendants.

2 It is the case of the plaintiff that the land originally measuring an extent of 2.76 cents, Minnamapalli Village, Valappady Taluk, Salem District, belongs to one

Krishnan Samban and thereafter, on his death, his three sons viz., Munian, Dhasan and Perumal had partitioned the property and the suit property, was allotted to the share of Munian. Munian died intestate leaving behind his only son namely Sellappan. Sellappan sold an extent of 1.23 cents of land to one Thilagam under registered Sale Deed dated 12.07.1974 and retained for himself an extent of 31 cents. The plaintiffs are the children of the Sellappan. It is their case that the property which was sold by the said Sellappan was exchanged by the said Thilagam with one Vivekanandham and on the death of Vivekanandham, his wife Dr.V.Manonmani, the first defendant and son, the second defendant succeeded to the estate. The plaintiff case was that the defendants had encroached into an entire extent of 1.53 cents over and above the extent sold to them. Therefore, pending suit, the petitioners have taken out the interlocutory application seeking the permission for appointment of an Advocate Commissioner to inspect the suit property and measure the same and file the report with plan in respect of the extent of lands admeasuring 1.23 acres and 31 cents respectively. The petition was opposed by the respondents and ultimately, it was dismissed by the learned Judge stating that this is a fact that can be proved by documents, challenging which order the above Civil Revision Petition has been filed.

3 As observed by the learned District Munsif, the issue as to whether the property that was sold to the defendants was only 1.23 cents or not, is an issue for consideration and the same is to be proved by the documents and there is no necessity to appoint the Advocate Commissioner. I find no infirmity in the order passed by the learned District Court. This Civil Revision Petition is dismissed and order passed in I.A.No.71 of 2018 in O.S.No.73 of 2018 dated 24.04.2018 stands confirmed. Consequently, connected miscellaneous petition is also dismissed. dua

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
The District Munsif cum
Judicial Magistrate Court,
Valappady.

+lcc to Mr.SP.Yuaraj,Advocate, SR.NO.9447

CRP.No.346 of 2019

Kak(15/03/2019)