

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	25.06.2019
Pronounced On	11.07.2019

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(NPD).No.1134 of 2015
and
M.P.No.1 of 2015

Zahuruddin (died)

- 1.Ameenabi
- 2.Noorulla
- 3.Anwardeen
- 4.Badrudden

... Petitioners

vs.

Hajipura Jamaath, Karugambattur

Rep.by its Muthavalli Abdul Shafi,

S/o.late Sheik Ahmed,

Hajipuram

Karugambattur Village and Post

Vellore Taluk and District.

... Respondent

Prayer: Civil Revision petition is filed under Section 115 of CPC, to set aside the order and decretal order dated 03.02.2015 made in E.A.No.1 of 2015 in E.P.No.217 of 2012 in O.S.No.600 of 1993 on the file of the Additional District Munsif, Vellore, Vellore District.

For Petitioners : Mr.T.Dhanya Kumar

For Respondent : No appearance

ORDER

The present Civil Revision Petition is directed against the fair and decretal order dated 03.02.2015 passed in E.A.No.1 of 2015 in E.P.No.217 of 2012 in O.S.No.600 of 1993 by the Additional District Munsif, Vellore, Vellore District.

2.The petitioners are the legal heirs of Zahuruddin who was the original plaintiff in O.S.No.600 of 1993. The said suit was filed for permanent injunction to restrain the defendants from interfering the peaceful possession of the suit schedule property. The said suit was decreed on 19.01.2000.

3.The respondent had preferred an appeal before the Subordinate Court, Vellore vide A.S.No.23 of 2000 which was also dismissed on 23.01.2001.

4.Under these circumstances, the petitioners' father Zahuruddin being successful plaintiff, the petitioners filed E.P.No.217 of 2012 to execute the decree dated 19.01.2000. In the

http://www.judis.nic.in said E.P, the petitioners was filed E.A.No.227 of 2012 for police

help by giving appropriate direction to enforce the decree of permanent injunction granted by the Court in O.S.No.600 of 1993 dated 19.01.2000. The respondent had filed counter affidavit stating that the decree cannot be executed and that the property the concerned is a Wakf Board property belonging to the Haijipura Masjid Sunnath Jamath and used as a burial ground.

5.In the said proceedings, the respondent filed E.A.No.1 of 2015 in E.P.No.217 of 2012 in O.S.No.600 of 1993 under Order 26 Rule 9 of CPC, 1908 to appoint an Advocate Commissioner to inspect the suit schedule property along with the help of surveyor and V.A.O to note down the physical feature, location and to measure the land of the suit mentions property.

6.By the impugned order E.A.No.1 of 2015 in E.P.No.217 of 2012 in O.S.No.600 of 1993 the Court has allowed as prayed for appointment an Advocate Commissioner to note down the physical feature, location and to measure the land of the suit mentions property and file a rough plan copy along with the plan of Taluk Surveyor. The Court has appointed Mr.T.Rajkumar as an Advocate Commissioner to inspect the suit schedule property.

7. Aggrieved by the said order, the present Civil Revision Petition has been filed.

8. Despite the notice served on the respondent, there is no representation for the respondent. Hence, this case is taken up for hearing.

9. It is the case of the petitioners that the land was a vacant site and therefore the respondent took possession of the property. Therefore the E.A.No.227 of 2012 in E.P.No.217 of 2012 in O.S.No..600 of 1993 was filed.

10. I have considered the grounds in the present Civil Revision Petition and the petitions filed before the Execution Court. By the impugned order, the court has merely appointed an Advocate Commissioner to note down the physical features and to file his rough plan with the plan of the Taluk Surveyor. The order of the Advocate Commissioner does not determine the rights of the property. Such exercise would reveal as to whether the petitioners was indeed in possession of the suit schedule property.

11.As per the decision of the Hon'ble High Court of Hyderabad in **Gurram Anantha Reddy vs Kalta Sayanna**, 2015 94) ALD 716, held that as follows:-

"12. The objections of the judgment debtor for enforceability of the said decree are that the E.P. court cannot travel beyond the decree granted by the original Court and there can be no appointment of Commissioner in E.P. proceedings and only in suits Commissioners can be appointed and the E.P. Court exceeded its jurisdiction by appointing an Advocate Commissioner for localizing and identifying the property and the respondent/plaintiff should have sought for amendment of the schedule of the plaint as well as the decree.

13. The contention that in Execution Proceedings, Commissioner cannot be appointed and the E.P. Court has no power to appoint Commissioner under Order 26 Rule 9 of the Code of Civil Procedure has absolutely no merit in view of the reason that as per Order 26 Rule 18-A of the Code of Civil Procedure, the provisions of Order 26 of Code of Civil Procedure are applicable to the proceedings in execution of a decree or order also."

12.If the petitioner was not in a possession of the suit schedule property, the decree obtained to restrain the respondent for taking possession of the suit schedule property cannot be countenanced.

13.In view of the same, I am of the view the present Civil

Revision Petition is liable to be dismissed.

C.SARAVANAN.,J.

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14.It is noticed that E.P.No.217 of 2012 is pending since the year of 2012 and the petitioners have successfully ensured keep the dispute alive.

15.Therefore, the learned Additional District Munsif, Vellore is directed to dispose the E.P.No.217 of 2012 within a period of six months from the date of receipt of a copy of this order.

16.The present Civil Revision Petition is thus dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

11.07.2019

Index :Yes/No
Internet :Yes/No
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To

- 1.The Additional District Munsif, Vellore.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

Pre-delivery order in

C.R.P.(NPD).No.1134 of 2015
and M.P.No.1 of 2015