

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2019

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

C.R.P.(PD) No.1703 of 2015

And
M.P.No.1 of 2015

1.Nallasamy
2.Arumugam
3.Sakhivel

... Petitioners

Vs.

T.K.Gurusamy

... Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India praying to set aside the order dated 19.12.2014 in I.A.No.248 of 2014 in O.S.No.365 of 2011 on the file of the Learned I Additional District Munsif Court, Bhavani and allow the Civil Revision Petition.

For Petitioners : Mr.S.K.Kaithamalai Kumaran

For Respondent : Mr.S.Lakshmanasamy

ORDER

The petitioners are the defendants in the suit in O.S.No.365 of 2011. While the suit is pending, the respondent / plaintiff filed a petition under Order 26 Rule 9 and Section 151 of the Civil Procedure

Code for declaration based on adverse possession and for permanent injunction. The said petition was allowed. Challenging the said order, the present Civil Revision Petition has been filed.

2.Mr.S.Kaithamalai Kumaran, the learned counsel for the petitioners would submit that the Commissioner report was filed on 19.12.2014 and the Civil Revision Petition was filed on 16.04.2015 i.e. after four months.

3.The learned counsel for the respondent would submit that the petitioner filed a Civil Revision Petition only in the month of April, 2015. The Order has already been complied with and the report has also been filed before the Court. Hence, nothing survives in this petition for further adjudication. Accordingly, prays for appropriate orders.

4.Considering the facts and circumstances, the suit in O.S.No.365 of 2011 has been filed for declaration and permanent injunction and the I.A.No.248 of 2014 has been filed by the respondent / plaintiff for the appointment of Commissioner to note down the physical features and to file a report before the Court.

5. Mere filing of the Commissioner Report will not be conclusive proof to the Trial Court. The Commissioner Report is only a guiding factor to arrive at a correct conclusion in which the petitioners / defendants will not be prejudiced and both the parties are entitled to canvas with regard to the merits and demerits of the Commissioner Report before the Trial Court.

6. In view of the above, without expressing any opinion, this Civil Revision Petition stands disposed of. The petitioner is at liberty to raise all the grounds before the Trial Court. No costs. Consequently, connected miscellaneous petition is closed.

09.04.2019

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

To

1. The I Additional District Munsif Court
Bhavani

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M.DHANDAPANI, J.
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