

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P.(PD) No.3506 of 2014 and
M.P.No.1 of 2014

1. Ganesan
2. Kandasamy
3. Subramaniam
4. Dhanapal

Petitioners

Vs

Jayaseelan

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreeal order dated 26.06.2014 made in I.A.No.113 of 2013 in O.S.No.52 of 2012, on the file of District Munsif Court, Vedaranyam.

For Petitioners : Mr.A.Sundaravadhanan

For Respondent : Mr.S.Sriram

ORDER

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The petitioners herein, who are the defendants in OS No.52 of 2012 on the file of District Munsif, Vedaranyam have preferred this Civil Revision Petition against the dismissal order passed in IA No.113 of 2013, which was filed to direct the Advocate Commissioner for revisiting the property.

2. Before the trial Court, the respondent herein has filed a suit OS No.52 of 2012 seeking the relief of permanent injunction, restraining the defendants and his agents in interfering with the plaintiff's peaceful possession and enjoyment of the Suit property. In an earlier occasion, at the time of filing the Suit, the plaintiff has filed an application under Order 6 Rule 9 of Civil Procedure Code for appointing Advocate Commissioner to note down the physical features of the suit property. The said application has been allowed by the trial Court. Relying upon that, the Advocate Commissioner appointed by the District Munsif, Vedaranyam visited the suit property and filed a report. It was stated by the trial Court as, before visiting the suit property, the Advocate Commissioner should intimate the plaintiff and defendant about the visiting of Suit property.

3. The sole ground raised by the counsel appearing for the revision petitioner before the trial Court is that as per the document having by the plaintiff, they are entitled to the property only to the extent measuring 1.22 acres. On the other hand, the plaintiff has filed a Suit for an extent of 1.33 acres. Therefore, measuring the property by Advocate Commissioner is very much necessary for proving the case of the defendant.

4. Per contra, the learned counsel appearing for the respondent would contend that even though the plaintiff claims injunction

for more extent, the same has to be decided by the trial Court, after recording the evidence on both sides. Therefore, refusing to allow the Advocate Commissioner to revisit the property is nothing but denial of justice.

5. Upon considering the arguments advanced by either side, it is true that the report filed by the Advocate Commissioner is not a substantial piece of evidence. However, considering the fact that the case filed by the plaintiff is based on the sale deed stands in his name, particularly with four boundaries, it is necessary to direct the Advocate Commissioner to revisit and measure the schedule mentioned properties. The lower Appellate Court without considering the said aspect, merely by mentioning the reason that notice has already been sent to the respondent and has dismissed the application. Hence, I am of the opinion that the decision rendered by the trial Court requires interference by this Court.

6. In view of the above discussion, the order of the trial Court in I.A.No.113 of 2013 in O.S.No.52 of 2012 is hereby set aside and this Civil Revision Petition is allowed. No costs. The learned District Munsif, Vedaranyam is directed to instruct the Advocate Commissioner to revisit the properties along with surveyor and submit a report in accordance with law. Consequently, the connected Miscellaneous Petition is closed.

vrn

05.09.2019

R.PONGIAPPAN, J.,

vrn

To

The District Munsif Court, Vedaranyam



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and
M.P.No.1 of 2014

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