

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE Mr. JUSTICE R. SURESH KUMAR

C.R.P. (PD) No. 3059 of 2019

and

C.M.P. No. 19673 of 2019

Valliammal ... Petitioner

Vs.

A. Vadivel (died)

1. Dakshinamoorthi

2. Arunachaleswaran

... Respondents

Prayer : Petition filed under Article 227 of the Constitution of India against the fair and final order dated 04.07.2019 passed by the Learned I Additional District Munsiff, Erode in I.A. No. 7 of 2019 in O.S. No. 138 of 2014 and prays to set aside the same.

For Petitioners

: Mr. L. Mouli

ORDER

This Civil Revision Petition has been filed against the fair and final order in I.A. No. 7 of 2019 in O.S. No. 138 of 2014 dated 04.07.2019 passed by the learned I Additional District Munsif, Erode.

2. Before the trial Court, the plaintiffs had filed a suit for declaration and injunction in respect of the suit property which is being hotly contested by the petitioner / defendant, who is the second defendant in the suit.

3. During the pendency of the suit, the second defendant filed a petition in I.A. No. 7 of 2019 under Order XXVI Rule 9 and 10 and Section 151 of Civil Procedure Code for appointment of Advocate Commissioner to note down the existing physical features in and around the petition mentioned property covered under the petitioner sale deed and to measure them with the help of qualified Taluk surveyor and to file a report and plan.

4. The said application filed before the Court below was dismissed on merits, as against which, the present revision has been filed.

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5. I have heard Mr. L. Mouli, learned counsel for the petitioner who would submit that, the property in question, originally

belongs to one Sengodagounder, who had got two sons, one Velapagounder and Songappagounder. From the legal heir of Marappagounder i.e., son of Velappagounder, one R. Gopalan, purchased the property through a sale deed in the year 1983 and the second defendant purchased the property in the year 1994 and i.e., how she traced the title.

6. Per contra, to the said claim made by the second defendant, it is the case of the plaintiffs that, they purchased the property from the legal heir of the Soangappagounder, son of Palaniappagounder and accordingly, they try to trace the title.

7. Now the issue before the trial Court is to decide who is entitled to title over the property and the said issue can be decided only on the documentary evidence filed and produced before the Court below and in order to adjudicate the issue raised before the trial Court, no way physical features of the property will help and if an Advocate Commissioner is appointed and he has noted down the physical features and given a report, that would ipso facto would not help either

plaintiffs or defendants to claim title over the property, as title can very well traced only by way of documents legally acceptable by the Court of law.

8. In that view of the matter, this Court feels that the present application seeking appointment of Advocate Commissioner as has been attempted to by the revision petitioner before the Court below is an unwarranted exercise and therefore, the said petition has been dismissed by the trial Court, of course rightly. Hence, this Court feels that, the said impugned order dismissing the I.A. No. 7 of 2019 needs no interference from this Court.

9. Accordingly, this Civil Revision Petition fails and hence, it is dismissed. Consequently, connected Miscellaneous Petition is also closed. No costs.

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Index: Yes / No

Speaking order / Non speaking order

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To

The learned I Additional District Munsiff,
Erode.



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R.SURESH KUMAR, J.

vji



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