

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.3074 of 2019

and

C.M.P.No.19836 of 2019

1.C.Chandersekar
2.C.Mohan
3.Devaraj
4.Gowrishankar

... Petitioners

Vs.

1.Amaresan
2.A.Devadass

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in I.A.No.28 of 2019 in O.S.No.22 of 2017 dated 17.07.2019, on the file of the District Munsif Cum Judicial Magistrate, Thirukalukundram.

For Petitioners

: Mr.V.Raghavachari

ORDER

This revision petition has been filed against the fair and decretal order passed by the District Munsif cum Judicial Magistrate, Thirukalukundram in I.A.No.28 of 2019 in O.S.No.22 of 2017, by order dated 17.07.2019.

2.The suit was filed by the respondents herein, who are the plaintiffs, for bare injunction, in respect of the suit property, against the defendants, who are the petitioners herein. In the said suit, already an Advocate Commissioner was appointed at the instance of the plaintiffs, who, after having verified the property in question, noted down the physical feature and filed a report along with a sketch to the scale, of the suit property. Subsequent to the filing of the said report as well as the sketch, it is the case of the revision petitioners/ defendants before the Court below that, if at all the plaintiffs' case was that, the defendants, who are the adjacent land owners on the northern side of the suit schedule property belong to the plaintiffs, have encroached upon a portion of the suit property beyond the survey stone of the northern border of the suit property, the same should have been suggested, if it is true, by the Advocate Commissioner in the report as well as the sketch annexed to the report. But no such averment or finding has been given by the Advocate Commissioner in the report, and the sketch annexed with the report, also does not suggest anything to that effect. Therefore, the real issue which raised by the plaintiffs in the suit to be decided for the

purpose of prayer sought for by the plaintiffs to grant of injunction against the defendants was that, to verify whether the defendants have encroached upon the property belonged to the plaintiffs. Since the Advocate Commissioner's report as well as the sketch filed along with the report does not suggest anything to that effect and no findings have been given to that effect, it will create unnecessary confusion, as both parties were interpreted the Advocate Commissioner's report as well as the sketch, according to their convenience and therefore, in order to put the facts straight and to get a further clarified report, the very same Advocate Commissioner can once again be requested by issuance of warrant, not only to note down the physical features of the suit property, but also to verify, whether there had been any encroachment on the part of the defendants in the suit property beyond the survey stones of the four boundaries of the suit property. Only for the said purpose, according to the learned counsel for the petitioners, the defendants filed the present application before the Court below and the same had been rejected by the learned Judge through the impugned order, therefore, the said order has to be interfered with.

3.I have considered the said submissions made by the learned counsel for the revision petitioners/defendants and perused the materials placed before this Court.

4.On perusal of the impugned order as well as the Advocate Commissioner's report and the sketch annexed to the said report, it reveals that, the Advocate Commissioner, in his report, has given the following findings:

"I submit that I have noted down the physical features of the suit property which is as follows there was a thatched roof hut and at the back of it, there was a terraced house built on the suit property on the north east corner. The suit property is covered with i) 1 coconut tree on north-west corner, ii)1 Neem tree and 1 mango tree on south-east corner, iii)1 Gliciridia tree on north-east corner, iv)1 drumstick tree on northern side v) 1 Coconut Tree on the Western Side. On the eastern side of the suit property there were plants of teak wood, ram seeta, pomegranate, guava, hibiscus trees. For other details the Rough sketch enclosed with the report would speak the physical features of the suit property."

5.In support of the said findings, the learned Advocate Commissioner has also filed a sketch to the scale, as annexure, which

also has been perused by this Court. The sketch clearly discloses what the Advocate Commissioner has stated, at para 4 of his report, which are shown/available in the sketch and since the sketch has been made to the scale, very particularly, in the northern border of the suit property, where, even according to the document, the suit property on the northern border will have the length of 28.8 meter from west to east, that has been clearly shown in the sketch. Like that, all the four borders have been shown to the scale in the sketch, where, what are the physical features of the suit property, mentioned and referred to in the report, had been shown. Therefore, it become quite clear that, the Advocate Commissioner does not suggest any encroachment on the part of the defendants i.e., the revision petitioners on the suit property *prima facie*.

6. When that being the position, this Court feels that, the revision petitioners/defendants cannot have any grievance over the report of the Advocate Commissioner as well as the sketch annexed thereto. Therefore, if at all, the revision petitioners want to take advantage of the said report, it is for them to do so and therefore, this Court is wondering as to why they filed an application before the Court below,

requesting the Court below once again to issue warrant to the same Advocate Commissioner to verify as to whether there had been any encroachment beyond the boundary stones of the suit property. The said exercise made by the revision petitioners/defendants, by filing the present application, before trial Court, in the opinion of this Court, is unwarranted. Therefore, the same has been rightly rejected by the learned Judge in the impugned order. Hence, the said order does not require any interference from this Court in this revision.

7.In that view of the matter, this Civil Revision Petition fails and accordingly, the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

18.09.2019

Sgl

To

The District Munsif cum Judicial Magistrate,
Thirukalukundram.

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R.SURESH KUMAR, J.
Sgl



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