

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.10.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) Nos.3461 to 3463 of 2019 and
CMP No.22762 of 2019

1. O.Sellappan
2. T.P.Kathiravan
3. Mrs.A.K.Rajeswari

Petitioners in all CRPs

Vs

- Ponnu Goundar (died)
1. Tmt.M.Gnanasoundaram
 2. Gouthaman

Respondents in all CRPs

PRAYER in all CRPs: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 18.07.2019 passed in I.A.No.2 to 4 of 2019 in O.S.No.112 of 2011 on the file of III Additional District Court, Salem.

For Petitioners (in all CRPs) : Mr.K.Sathiamoorthy

COMMON ORDER

These Civil Revision Petitions have been preferred against the fair and decreetal orders dated 18.07.2019 passed in I.A.No.2 to 4 of 2019 in O.S.No.112 of 2011, by the learned III Additional District Judge, Salem.

2. The brief averments made in the affidavit filed in support of the petition filed before the trial court is as follows:-

2.1. The plaintiffs have filed the suit in O.S.No.112 of 2011, seeking the relief of directing the 2nd and 3rd defendants to execute a sale deed in respect of schedule mentioned suit property and also they prayed for the relief of direction directing the 1st respondent to return the amount of Rs.1,00,000/- with interest at 12% from the date of plaint till the date of recovery. Further they prayed for the relief of permanent injunction restraining the defendants, their men, agents or any other persons from interfering with the peaceful possession and enjoyment of the schedule mentioned suit property. In respect to the schedule mentioned suit properties, the petitioners have taken steps to form layout by laying road and fixed boundry stones in the suit property and formed layout adjacent to suit property in SF No.41/4 by entering into sale agreement and joint venture agreement dated 05.09.2003 with the 1st plaintiff to lay load east to west to access to the suit property and 3rd plaintiff also got registered sale deed dated 21.09.2007 in pursuance of the sale agreement dated 29.08.2003, executed by the 2nd and 3rd defendants. After completing the above said process, the 1st defendant made an unlawful attempt to remove the boundary stones fixed to all the plots in the suit property. After filing the suit when at the time, the defendant was examined as DW 1, he had denied that on 06.11.2014, no road was formed adjacent to suit property as per sale agreement dated 29.08.2003 and no improvement

was done in the suit property as per the sale agreement dated 29.08.2003 and deed of General Power of Attorney dated 29.08.2003. In the said occasion, it is necessary to appoint Advocate Commissioner to inspect the suit property along with adjacent lands in S.Nos.41/4 and 41/7 to note down the physical features. Further, it is necessary to recall the evidence of PW 1 and to reopen the plaintiff's side evidence for receiving documents.

3. The averments set out by the respondent in the counter affidavit in short is as follows:-

3.1. Before filing the application to appoint the Advocate Commissioner in earlier, the revision petitioner has filed a petition to appoint an Advocate Commissioner, in which counter has also been filed by the respondent. After institution of the suit, the petitioner has filed 16 Interlocutory Applications. On the other hand, the plaintiff/petitioner has not at all filed any petition except the petition under Order 3 Rule 2 of Civil Procedure Code, at the time of presenting the suit. The wilful act keeping the suit pending from 2011 is abuse process of law. Further, it is an after thought of the petitioner. The earlier application filed by the petitioner to re-open and to re-call the petition are all dismissed by this Court. Only to protract the proceedings, the petitioners have filed these type of applications, which is unwarranted one and unnecessary for disposing the suit filed by them.

4. Based on the above pleadings, the learned judge, III Additional District Court, Salem had dismissed the applications filed by the petitioners. Challenging the same, the petitioners are before this Court.

5. Before entering into the merits and demerits of the order passed by the Court below, it is necessary to see the prayer sought for in the plaint filed by the plaintiff. In fact, the suit has been filed for the relief of specific performance, in which the plaintiff has to prove the genuineness of the sale agreement, their readiness, willingness and other factors according to Section 16 C of Specific Relief Act. It is admitted on either side that the suit pertains to these Civil Revision Petitions, already posted for both side arguments and at that time, the petitioners have filed these applications. For availing the relief of specific performance, it is not necessary for the plaintiff/petitioner to prove the possession of the property. The physical features now wanted to verify by the petitioner is no way connected and also it is against the relief claimed by them. In this occasion, it is to be noted that the suit is filed in the year of 2011 and it is unnecessary to file such applications belatedly in the year of 2019. The said attitude of the petitioners discloses the fact that they are attempted to collect other evidence by way of appointing the Advocate Commissioner. More than that, the document now required to be received is the document created after the institution of the suit. Further, the documents such as revenue records, copy of the orders passed by this Court and copy of the plaint in OS No.45 of 2016, did not elicit, on what

ground, those documents are necessary for deciding the case of the petitioner/plaintiff.

6. In the impugned order, the learned III Additional District Judge also came to the same conclusion that the petitioners are attempted to protract the proceedings and also attempted to collect the evidence by way of filing these applications. So the findings arrived at by the learned III Additional District Judge is well within the purview of the law and it cannot be set aside through an order of this Court.

7. In view of the above discussions, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

25.10.2019

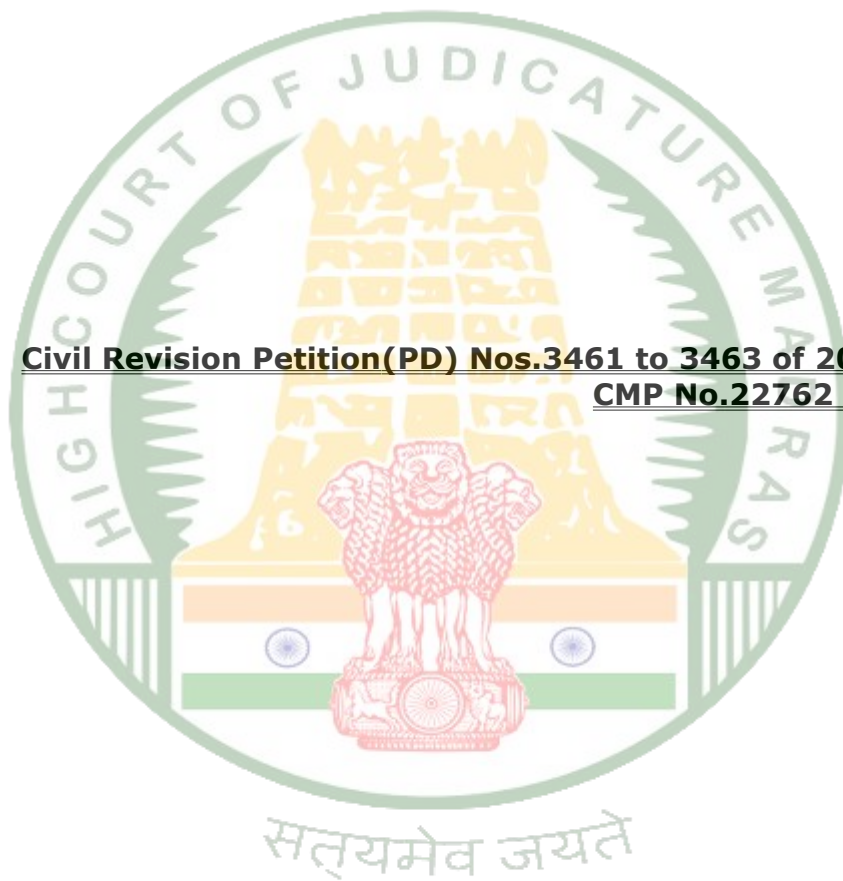
To

The III Additional District Court, Salem.

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R.PONGIAPPAN, J.,

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