



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.R.P. (MD) (PD) .No.380 of 2019

and

C.M.P (MD) .No.1871 of 2019

WEB COPY

1.Vinju.Co.Rajaram
2.Vinju.Co.Naganathan : Petitioners/Petitioners/Plaintiffs

Vs.

1.Giri R.Vasanthi
2.Kettalu K.B.Vasumathi
3.Vanaja
4.Arulmighu Sri Renganatha Swamy Thirukovil
Represented by its Executive Officer/Joint Commissioner
Sriirengam
Trichy District
5.K.R.K.Chandrasekaran
6.Shanthi : Respondents/Respondents/Defendants

PRAYER: The Civil Revision Petition has been filed under Article 227 of the Constitution of India against the fair and decreetal order dated 30.11.2018 passed in I.A.No.678 of 2018 in O.S.No.114 of 2013 on the file of the learned District Munsif Court, Paramakudi, Ramanathapuram District.

For Petitioners

: Mr.V.P.Rajan

ORDER

The Civil Revision Petition has been preferred against the fair and decreetal order dated 30.11.2018 passed in I.A.No.678 of 2018 in O.S.No.114 of 2013 on the file of the learned District Munsif Court, Paramakudi, Ramanathapuram District.

2.The petitioners herein preferred I.A.No.678 of 2018 for appointment of Advocate Commissioner to measure what are the constructions made in the suit properties and the status of the construction with the help of surveyor and also to file a detailed report. In the said petition, the petitioners contended that they have filed a suit in O.S.No.114 of 2013 on the file of the learned District Munsif, Paramakudi for the relief of declaration with regard to the 1st item of the suit property and mandatory injunction with regard to the construction made by the defendants 1 to 3 in the suit properties and the 2nd item of the property is a common pathway in which both the parties have right over the same and also for mandatory injunction with regard to the removal of the construction made in the common pathway ie. the 2nd item of the



property.

3.The petitioners herein have further contended that the already petition in I.A.No.891 of 2013 was allowed and the advocate commissioner after inspecting the suit properties, has filed the report in the said interlocutory petition. The further contention of the petitioners is that inspite of the order passed by the trial Court, the respondents are making construction and hence, they preferred a contempt petition in I.A.No.350 of 2014 and the same is pending.

4.Be that as it may, once again the petitioners herein preferred I.A.No.366 of 2014 to re-issue warrant to the same commissioner to inspect the suit properties and to file a detailed report. But the said petition was dismissed, since no valid reason has been stated for the purpose of re-issue of warrant. Against the order passed in I.A.No.366 of 2014, the petitioners have preferred C.R.P.No.1960 of 2014 and the same was also dismissed for the same reason that the petitioners have not stated any reason for re-issue of warrant to the same commissioner.

5.The grievance of the petitioners is that the above said cases were dismissed, since there was no reason stated by the petitioners for re-issuing the warrant to the same Advocate Commissioner. But the petitioners had contended that when they filed the suit for the relief of declaration with regard to the 1st item of the suit property and also mandatory injunction with respect to the construction that is made by the defendants in the 1st item and declaration with regard to pathway and mandatory injunction with regard to the construction that is made in the suit items, whereas the Court had dismissed the said applications.

6. The learned counsel for the petitioners contended that the relief is one for mandatory injunction because of the constructions made by the respondents/defendants in the suit properties, in which they have exclusive right. Unless the commissioner is appointed to note down the means and further construction made in the suit properties, the petitioners cannot prove the same before the trial Court without commissioner's report.

7.In the said interlocutory applications, the respondents also filed their counter statement. The trial Court after observing the contents made by both parties, has given a finding that already two petitions filed by the petitioners were allowed at the first instance and the injunction was also granted and subsequent to that the application was filed to re-issue warrant is not considered by the trial court and the contempt petition was also filed by the petitioners and the same is pending and the trial Court has proceeded with the trial. Now the trial court has concluded that when already the commissioner has filed the report and the Court has also passed an order accordingly, subsequent to



that contempt petition was filed and the same is pending, the petitioner need not file an another petition to prove his case. When already there was a report with regard to the construction or encroachments were made in the suit properties, there is no necessity for the petitioners once again to appoint advocate commissioner. If any further construction is made, the same can be placed before the Court by way of photographs. The trial Court has also observed that the earlier applications which were filed by the petitioners with same prayer was dismissed by the trial Court. Against which, civil revision petition has been preferred by these petitioners and the same was also dismissed with a direction to dispose the suit within in a period of 3 months.

8.The status of the suit is that already the commissioner has pointed out all the measurements and constructions, the petition filed by the petitioners one by one and further placed an additional evidence in respect of their cases are not required. When the measurement of the properties and the documents were proved that the constructions made by the defendants by way of encroachment in the suit properties, the petitioners need not file an another application for appointment of commissioner to collect the evidence. The findings of the trial court is very much reasonable that already the commissioner has filed his report with all measurements and physical features that is existing in the suit properties.

9.I have heard the learned counsel appearing on either side.

10.In view of the above, this Court finds that the petitioners are only with an intention to drag on the proceedings and also depriving the trial court from complying the direction passed by this Court in C.R.P.No.1960 of 2014 to dispose the case within 3 months. In the result, this civil revision petition is dismissed and the trial Court is directed to proceed with the case and comply the direction as already passed by this Court in the aforesaid revision. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)

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To

1.The District Munsif, Paramakudi

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Dated:- **25.02.2019**