



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 22.02.2019

DELIVERED ON : 11.03.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No. 2307 of 2015 (PD)

and

M.P. (MD) No. 1 of 2015

1. Nesamma
2. Anitha
3. Ajitha
4. Bennet Murugesan
5. Yesudhas

.. Petitioners

Vs.

Robert

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.202 of 2015 in O.S.No.498 of 2010 on the file of the learned II Additional District Munsif, Kuzhithurai dated 16.09.2015.

For Petitioners

: Mr.M.P.Senthil

For Respondent

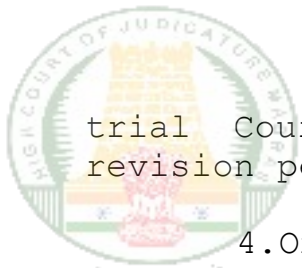
: Mr.K.Sreekumaran Nair

ORDER

Heard Mr.M.P.Senthil, learned counsel appearing for the petitioners and Mr.K.Sreekumaran Nair, learned counsel appearing for the respondent.

2.This petition has been filed against the order passed in I.A.No.202 of 2015 in O.S.No.498 of 2010 dated 16.09.2015 on the file of the learned II Additional District Munsif, Kuzhithurai.

3.The petitioners are the plaintiffs and the respondent is the defendant in the suit. The petitioners filed a suit in O.S.No.498 of 2010 before the learned II Additional District Munsif, Kuzhithurai for a prayer of declaration and injunction. The respondent filed a petition in I.A.No.202 of 2015 under Order 26 Rule 9 of C.P.C., for appointment of the Advocate Commissioner to note down the physical features of the suit property and the property of the defendant and the petition was allowed by the



trial Court. Against that order, the petitioners filed this revision petition.

4. On the side of the petitioners, it is stated that the petitioners sold 35 cents of land to the defendant excluding a small portion which was a grave of their brother who died as a child and that portion was specifically excluded in the sale deed and that as per the District Municipalities Act, no construction is permitted within 90 ms from a grave yard.

5. On the side of the petitioners, it is stated that this petition was filed to set aside the order in I.A.No.202 of 2015 and this Court has granted stay order on 16.10.2015 and that the stay order was made on 26.10.2015 and the same was intimated to the lower Court and the respondent counsel filed a memo and even after the filing of the memo, the Commissioner report was filed and prayed the order passed by the trial Court is to be set aside.

6. On the side of the respondent, it is stated that the respondent constructed a house 40 years ago. Already 620 sq. Links was excluded from the sale deed. Only the balance was sold to the respondent and the respondent has put up 40 years old construction only in that area which was sold out to the respondent. No body questioned the sale till the filing of the suit and the petitioners want some pathway through common wall of the respondent and they filed this false case. It is stated that there is no way inside the property of the petitioners and even the Commissioner report reveals that there is no grave yard in the suit property.

7. It is seen that the petitioners sold 35 cents of land to the respondent excluding 620 sq. Links. The contention of the petitioners is that the Advocate Commissioner was appointed to collect evidence and the petition was filed only after the completion of the trial. This is not a contempt petition and the question as to whether the stay order was served to the Commissioner or not need not be decided in this petition. It is seen that the stay order was served to the respondent counsel and the Court and a memo dated 26.10.2015 was filed and on the same date itself, the Commissioner has filed his report and plan. If the petitioners are aggrieved by the Commissioner's claim, the petitioners can file his objections to the report. The purpose of I.A.No.202 of 2015 was already over and the Commissioner has already filed his report. If the petitioners want re-visitation by the Commissioner, he is at liberty to approach the trial Court. It is the duty of the plaintiffs to prove the case. As there is no burden on the defendant to disprove the case of the plaintiff, the allegation that the Commissioner was appointed for gathering evidence from the defendant is unsustainable.



8. In the above circumstances, there is nothing left for adjudication and there is no merits in this petition. This Civil Revision Petition is dismissed by confirming the order passed in in I.A.No.202 of 2015 in O.S.No.498 of 2010 on the file of the learned II Additional District Munsif, Kuzhithurai dated 16.09.2015. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar (CS)

To

The II Additional District Munsif, Kuzhithurai.

COPY TO

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-53207[F] dated 12/03/2019)

mrn

C.R.P. (PD) (MD) No.2307 of 2015
11.03.2019

KM/ (19.03.2019) 3P 5C