



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) No.1179 of 2019

and

C.M.P (MD) No.6489 of 2019

1.Karuppaiah

2.Marimuthu

3.Chandran@Marimuthu ... Petitioners/Petitioners/Defendants

vs.

1.Sivaraman@Jeyaraman

2.Thillairajan

3.Shanmugarajeshwaran ... Respondents/Respondents/Plaintiffs

Prayer: Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 07.03.2019 made in I.A.No.248 of 2017 in O.S.No.342 of 2015, on the file of the Additional Sub Court, Srivilliputhur.

For Petitioners : Mr.S.Alagusundar

For Respondents : No appearance

ORDER

This revision petition has been filed against the fair and decreetal order dated 07.03.2019 made in I.A.No.248 of 2017 in O.S.No.342 of 2015, on the file of the Additional Sub Court, Srivilliputhur.

2.The respondents/plaintiffs filed a suit in O.S.No.342 of 2015 against the revision petitioners/defendants for permanent injunction and for declaration, declaring the sale deed dated 07.10.1978 as null and void. Pending suit, the revision petitioners filed an interlocutory application in I.A.No.248 of 2017 for appointment of advocate commissioner to survey the schedule mentioned properties and to measure all the sub division of the survey numbers with the help of Surveyor and to note down the physical features of the



schedule mentioned properties. After hearing both sides, the Court below dismissed the said application, against which, this revision petition has been filed.

3. The learned counsel for the petitioners would state that the respondents/plaintiffs have mistakenly mentioned the survey numbers and extent of the properties, which are not correlated with the physical features of the properties in the present petition. The learned counsel brought to the notice of this Court that the petitioners/defendants are not parties to the suit in O.S.No.137 of 2010, in which, already a commissioner was appointed and the report has been filed before the concerned Court. The learned counsel further submitted that without an appointment of Advocate Commissioner, the petitioners/defendants cannot prove their rights in the schedule mentioned properties and the encroachments made by the respondents/plaintiffs could not be ascertained. Hence, he prays to set aside the order passed by the Court below.

4. Heard the learned counsel for the revision petitioners and perused the materials available on record. Despite service of notice, none appeared for the respondents either in person or through counsel. Hence, this Court is inclined to pass orders on the merits of the case.

5. A perusal of record shows that the learned Judge has given a finding that since an earlier report is there, the present Commissioner report is not necessary. But, the learned Judge failed to see that the present petitioners are not parties to the earlier suit. Therefore, in my considered opinion, no prejudice will be caused to the respondents/plaintiffs, if the Advocate Commissioner is appointed to adduce the physical features of the schedule mentioned properties.

6. For the reasons stated above, to meet the ends of justice and to render substantial justice to the parties concerned, this Court is inclined to allow this petition. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.248 of 2017 in O.S.No.342 of 2015 is set aside and the matter is remanded to the file of the Additional Sub Court, Srivilliputhur. The learned Judge is directed to appoint an Advocate Commissioner to note down the physical features of the suit schedule properties within a time frame and the Advocate Commissioner shall file a report, within the stipulated time, as fixed by the learned Judge. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/



To

The Additional Subordinate Judge,
Srivilliputhur

+1 CC to M/s.S.ALAGU SUNDAR, Advocate (SR-82075[F] dated 16/08/2019
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MSA

JM/29.08.2019/3P/3C