



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM:

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1562 of 2019
and CMP(MD)No.8273 of 2019

1. E.Pachamal
2. Selvarajakumaari
3. P.Suresh
4. P.Muthubalan
5. P.Subash
- 6.Perumal

... Revision Petitioners/
Respondents/Defendants

versus

S.Arumugam

... Respondent/Petitioner/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 16.03.2019 passed by the Principal District Munsif, Tirunelveli, in I.A.No.2 of 2019 in O.S.No.515 of 2011.

For Revision Petitioners : Mr.H.Arumugam

ORDER

This Civil Revision Petition has been filed against the order dated 16.03.2019 passed by the learned Principal District Munsif, Tirunelveli, in I.A.No.2 of 2019 in O.S.No.515 of 2011.

2. The revision petitioners herein are the defendants in O.S.No.515 of 2011 on the file of the learned Principal District Munsif, Tirunelveli. The respondent herein filed a suit in O.S.No.515 of 2011 seeking for the relief of declaration, declaring that the suit 2nd schedule property absolutely belongs to him and for injunction restraining the defendants/revision petitioners herein from interfering with his peaceful possession and also for mandatory injunction directing the 2nd defendant to remove the encroachment made in 4th schedule property and also for permanent injunction restraining the 1st defendant from interfering with his peaceful possession of the suit 3rd schedule property.



3. The plaintiff/respondent herein filed I.A.No.1834 of 2011 for appointment of a Commissioner and the Commissioner also filed an interim report as well as a final report. Thereafter, while the suit was posted for arguments, the respondent filed a petition in I.A.No.2 of 2019 for re-issuance of warrant. The revision petitioners/defendants contested the same by filing counter as the Commissioner had already inspected the properties three times and filed the report and hence, the petition for reissuance of warrant to the Commissioner is not maintainable. However, the Court below, by order dated 16.03.2019, allowed the petition in I.A.No.2 of 2019, directing the Commissioner after giving notice to both parties to re-survey the property once again with the help of Surveyor, by taking into consideration of the defects pointed out by the plaintiff/respondent herein. Challenging the same, the present Civil Revision Petition has been filed.

4. The main grievance of the revision petitioners is that the Court below has directed the Commissioner to take into consideration the defects pointed out by the plaintiff/respondent herein alone and based on that, the Commissioner shall measure the property. Further, the order does not say anything about the defects pointed by the revision petitioners/defendants. Hence, the order of the Court below is unsustainable in law.

5. This Court has perused the order passed by the Court below.

6. A perusal of the order passed by the Court below reveals that Commissioner is directed to take into consideration of the defects pointed out by the plaintiff/respondent herein alone and on that basis, he shall measure the suit property. As rightly contended by the revision petitioners, the order does not mention anything about the defects pointed out by the defendants/revision petitioners. When the Court below appointed a Commissioner to measure the property, it should have permitted both the parties to point out their defects to the Advocate Commissioner and on that basis alone, the Commissioner shall measure the property. But, the Court below did not do so. Therefore, this Court is inclined to direct the Advocate Commissioner to take into consideration of the defects pointed out by the defendants/revision petitioners herein also and on that basis, he shall measure the property and submit a report before the Court below.

7. Accordingly, the Advocate Commissioner, while re-surveying the suit property, is directed to take into consideration of the defects pointed out by the defendants/revision petitioners herein and on the defects pointed out by both sides, measure the suit property and also submit a report before the Court below.



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8. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif,
Tirunelveli.

+1 CC to M/s.H.ARUMUGAM, Advocate SR-86509.

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