

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..02..2020
CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.778 of 2020
and
C.M.P.No.4184 of 2020

1.Rasan @ Murthy
2.Muthusamy

... Petitioners/petitioners/plaintiffs

-Versus-

1.Marimuthu
2.Narayana @ Narayanasamy
3.Karuppan
4.Venkattan
5.Senthilkumar
6.Mariappan
S/o.Oomaiyan

7.Palanisamy
8.Mariappan
S/o.Thasan

9.Ramasamy
10.Rangasamy
11.Kuppanan

12.Venkatraman ... Respondents/respondents/defendants

Petition filed under Article 227 of The Constitution of India, praying to set aside the order dated 30.01.2013 in I.A.No.713 of 2012 in O.S.No.360 of 2011 by the learned District Munsif, Gobichettipalayam, Erode District.

For Petitioner : Mr.V.P.K.Gowtham

ORDER

This civil revision petition has been filed against the order dismissing the application filed by the petitioner seeking appointment of an Advocate Commissioner for the purpose of fixing the western side boundary line of the suit property and measuring the actual extent of encroachment of the land of the plaintiffs in the suit property in R.S.No.89 with the assistance of a Taluk or Firka Surveyor and Village Administrative Officer to submit a report with plan.

2. The petitioners are the plaintiffs in the suit. They have filed the suit for declaration of their title in respect of the suit property; delivery of possession; and for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. Pending suit, the plaintiffs filed the application under revision for appointment of Advocate Commissioner for the purpose stated above. That application was dismissed by the court below. Challenging the same, the plaintiffs are before this court with this civil revision petition.

3. This civil revision petition is coming up today for admission. I have heard the learned counsel for the petitioner and also perused the records carefully.

4. The suit is for declaration of title and for delivery of possession. The application under revision was filed for appointment of Advocate Commissioner to fix the western boundary line of the suit property and measure the actual extent of encroachment of land. The court below dismissed the application holding that already in an another suit proceedings, an Advocate Commissioner was appointed and he had also filed his report and that report is the basis for the present suit. In the above circumstances, the petitioner might have known the actual encroachment alleged to have been encroached by the defendants and for that purpose, the plaintiffs could not seek for appointment of Advocate Commissioner. On considering the order impugned in this revision petition, this court finds no infirmity in the reasoning given by the learned District Munsif in refusing to appoint an Advocate Commissioner and thus, the revision deserves only to be dismissed.

In the result, the civil revision petition is dismissed and the order of the court below is confirmed. However, considering the fact that the suit is pending since 2011, the learned District Munsif, Gobichettipalayam, Erode District, is directed to take up the suit for trial and dispose of the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected CMP is closed.

kmk

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The District Munsif, Gobichettipalayam, Erode District.

C.R.P.No.778 of 2020

(CO)
mst(28/05/2020)



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