

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 19.11.2020

Pronounced On : 08.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.R.P.(PD).No.3898 of 2015

and

M.P.No.1 of 2015

1.Asma Ammal

2.Jahir Hussain

3.Sadiq Basha

... Petitioners

P.S.Mohamed Sheika Maraikkayar

... Respondent

Prayer: This Civil Revision Petition has been filed under Article 227 of the Constitution of India against the Fair and Decretal Order dated 01.08.2015 passed in I.A.No.100 of 2015 in O.S.No.07 of 2013 by the District Munsif Court at Thiruthuraipoondi.

For Petitioners : Mr.T.S.Baskaran

For Respondent : Mrs.M.Meenatchi

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants against the dismissal of their application dated 01.08.2015 in I.A.No.100 of 2015 in O.S.No.7 of 2013 on the file of the District Munsif Court, Thiruthuraipoondi.

2. The petitioners herein had filed an application in I.A.No.100 of 2015 in O.S.No.7 of 2013 on the file of the District Munsif Court, Thiruthuraipoondi under Order XXVI Rule 9 and Section 151 of C.P.C., to appoint an Advocate Commissioner to measure the suit property with the help of a Surveyor and file a report with plan. The learned District Munsif, Thiruthuraipoondi, by the order dated 01.08.2015 had dismissed the said application. Feeling aggrieved, the petitioners/defendants have filed the present Civil Revision Petition.

WEB COPY

3. Heard Mr.T.S.Baskaran, learned counsel for the petitioners and Mrs.M.Meenatchi, learned counsel for the respondent.

4. The learned counsel for the petitioners has submitted that the respondent herein had filed a suit in O.S.No.7 of 2013 on the file of the learned District Munsif, Thiruthuraipoondi, for the relief of permanent injunction restraining the petitioners herein from interfering with his peaceful possession and enjoyment of the suit property. He further submitted that the 1st petitioner is the owner of the land ad-measuring 1299.5 sq.ft., equivalent to 3 cents in S.No.257/5 of Duraikadu Revenue Village, in which, the respondent herein had encroached two cents on the southern side and put up a wall. He further submitted that the respondent had encroached two cents of land and fraudulently created a document dated 10.09.1973 in respect of one cent and filed the aforesaid suit. He further submitted that the respondent had filed a suit stating that he purchased one cent, but, in the plaint he has shown two cents and also gave wrong boundaries and claimed more extent and therefore, the petitioners / defendants had filed an application to appoint an Advocate Commissioner to measure the suit property with the help of a Surveyor and file a report with plan, but, the learned District Munsif had erroneously dismissed the said application. He further submitted that since there is a dispute with regard to the extent of the suit property, the

appointment of Advocate Commissioner is absolutely necessary and therefore, he prayed to allow this Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.100 of 2015 and allow the said application.

5. Per contra, the learned counsel for the respondent has submitted that the 1st petitioner had sold the suit property ad-measuring 581.5 sq.ft., with specific boundaries through a registered sale deed dated 10.09.1973 to the respondent and from that date onwards, the respondent is in possession and enjoyment of the said property. She further submitted that the respondent, after purchasing the suit property had put up a compound wall including his property, which is situated on the eastern side and he is enjoying the suit property along with the said property. She further submitted that the petitioners had filed an application in I.A.No.152 of 2013 stating that the first petitioner did not affix her thumb impression in the sale deed dated 10.09.1973 and her thumb impression has been forged and falsely created the said sale deed by the respondent and hence, the said document has to be sent to the finger print expert for getting opinion and accordingly the said petition was allowed and the admitted thumb impression of the 1st petitioner and the aforesaid sale deed were sent to the finger

print expert for getting opinion and the finger print expert, after comparing the said thumb impressions, sent a report stating that the 1st petitioner only had executed the said sale deed dated 10.09.1973. She further submitted that after receipt of the said report, with an intention to drag on the proceedings, the petitioners had filed an application in I.A.No.100 of 2015 to appoint an Advocate Commissioner to measure the suit property. She further submitted that the entire property in S.No.257/5 need not be measured. She further submitted that the Advocate Commissioner cannot be appointed for collecting evidence and taking into consideration the aforesaid facts, the Trial Court had rightly dismissed the said application and in the said order, this Court need not interfere and therefore, he prayed to dismiss this revision petition.

6. A perusal of typed set of papers filed by the petitioners shows that the respondent herein had filed a suit in O.S.No.7 of 2013 on the file of the District Munsif, Thiruthuraipoondi, for the relief of permanent injunction to restrain the petitioners herein from interfering with his peaceful possession and enjoyment of the suit property. In the plaint schedule, the respondent has mentioned the extent as 581.5 sq.ft.,equal to 0.00.50 ares. He also mentioned East-

West and North-South measurements. Further, he also mentioned boundaries. According to the petitioners, the respondent claimed in his suit that he purchased one cent of land from the 1st petitioner, but, he filed the suit in respect of two cents of land and hence, an Advocate Commissioner has to be appointed and the suit property has to be measured with the help of a Surveyor. If the respondent purchased one cent of land and filed the suit in respect of two cents of land, the said fact has to be decided by referring to the sale deed, under which, the respondent claims right, therefore, the property need not be measured.

7. It is also seen from the order of the Trial Court that the petitioners herein had filed an application in I.A.No.152 of 2013 stating that the 1st petitioner had not executed the sale deed in favour of the respondent and the thumb impression found in the said sale deed is not that of her thumb impression and hence, finger print expert's opinion has to be obtained and the said application was allowed and thereafter, the said sale deed and admitted thumb impression of the 1st petitioner were sent to the finger print expert and the finger print expert after comparing the said document, sent a report stating that the thumb impression found in the said sale deed belongs to the 1st petitioner herein and thereafter, the

respondent filed a proof affidavit as PW1 and at that stage, the petitioners had filed the petition to appoint an Advocate Commissioner only with a view to drag on the proceedings. This Court does not find any infirmity in the said findings. Therefore, this Civil Revision Petition is liable to be dismissed.

8. In the result, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

08.12.2020

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
ssn

To
The District Munsif Court,
Thiruthuraipoondi.

WEB COPY

C.R.P.(PD).No.3898 of 2015
and
M.P.No.1 of 2015

P. RAJAMANICKAM, J.,
ssn



Pre-delivery Order in

**C.R.P.(PD).No.3898 of 2015
and
M.P.No.1 of 2015**

WEB COPY

08.12.2020