

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.778 of 2019 and
C.M.P.Nos.4462 of 2020 and 5114 of 2019

1.Murugan
2.Elumalai

...Petitioners/Defendants/
Petitioners

versus

Annadurai

... Respondent/Plaintiff/
Respondent

PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to set aside the fair and decretal order dated 02.01.2019 in I.A.No.1035 of 2018 in O.S.No.104 of 2011 on the file of the District Munsif, Polur, Tiruvannamalai District.

For Petitioner : Mrs.Aswini Devi K.

For Respondent : Mr.K.V.Sajeev Kumar

ORDER

This Civil Revision Petition has been filed by the petitioners/defendants seeking to set aside the fair and decretal order dated 02.01.2019 in I.A.No.1035 of 2018 in O.S.No.104 of 2011 on the file of the District Munsif, Polur, Tiruvannamalai District.

2. The respondent/plaintiff has filed the said suit in O.S.No.104 of 2011 for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. During the pendency of the said suit, I.A.No.1035 of 2018 was filed by the

respondent/plaintiff before the Court below to appoint an Advocate Commissioner to inspect and note down the physical features and to measure the suit property and to submit a report along with plan and the same was allowed by the Court below on 02.01.2019. Aggrieved by the same, the revision petitioners have come forward with the present revision petition before this Court.

3. The learned counsel for the revision petitioners submitted that the petitioners/defendants has contended that the respondent/plaintiff herein as sought for appointment of the Advocate Commissioner only with an intention to collect the materials in respect of the suit property, to prove the possession of the suit property. Hence, the order passed by the court below is liable to be set aside.

4. Countering the above submissions, the learned counsel for the respondent/plaintiff submitted that the respondent/plaintiff has filed the suit for appointment of Advocate Commissioner and the said suit is filed for declaration and for permanent injunction, both the petitioners as well as the respondent have purchased the property from the same vendor. Therefore, the dispute regarding the extent of the suit property is pending, and if the Advocate Commissioner is appointed to inspect and measure the suit property along with the help of the Surveyor, no prejudice would be caused to the defendants.'

5. Having heard the learned counsel appearing for the parties and having considered their rival submissions, and it is seen that the respondent/plaintiff, pending the said suit, has filed an application in I.A.No.1035 of 2018 in O.S.No.104 of 2011 under Order 26 Rule 9 of CPC before the Court below to appoint an Advocate Commissioner and to note down the physical features of the suit property and to submit a report with plan. The allegation made by the respondent/plaintiff in the plaint is that the revision petitioners/defendants have encroached upon the land in the suit property and disputed the extent of the property in the suit. Hence, the respondent has filed the I.A.No.1035 of 2018 to appoint an Advocate Commissioner and to determine the issues with regard to the extent of the property involved in the present suit. The said interlocutory application was allowed by the Court below. It is the contention of the learned counsel for the revision petitioners/defendants that the possession of the suit property cannot be decided, based on the Advocate Commissioner's report. Therefore, the revision petitioner objected the appointment of an advocate commissioner in the suit. If the revision petitioner having any

grievance of the report, the revision petitioners have to make their objections before the trial court after filing of the report of the Advocate Commissioner. Hence, there is no merit in the Civil Revision Petition and consequently the same is liable to be rejected.

6. In view of the above submission made by the learned counsel on either side, the civil revision petition shall stand dismissed. Liberty is granted to the revision petitioners herein/defendants to raise all their objections after filing of the Advocate Commissioner's report, before the Court below. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

msm
To

1. The District Munsif, Polur, Tiruvannamalai District.

+1 cc to M/s.P.Veena Suresh Advocate sr23024

+1 cc to M/s.K.V.Sanjeev kumar Advocate sr23061

C.R.P.(PD)No.778 of 2019 and
C.M.P.Nos.4462 of 2020 and 5114 of 2019

ssv(co)
aa04/08/2020

सत्यमेव जयते

WEB COPY