

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

C.R.P.(PD)No.961 of 2020
and C.M.P.No.5229 of 2020

1.M.Ramesh
2.V.R.Mani

Petitioners

versus

A.Sakthivel

Respondent

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and final order of the learned District Munsif, Kangayam, made in I.A.No.632 of 2018 in O.S.No.90 of 2018 dated 22.01.2020.

For Petitioners : Mr.M.R.Thangavel

ORDER

This Civil Revision Petition has been filed by the petitioner seeking to set aside the fair and final order of the learned District Munsif, Kangayam, made in I.A.No.632 of 2018 in O.S.No.90 of 2018 dated 22.01.2020.

2.The respondent/plaintiff has filed the suit in O.S.No.90 of 2018 for declaration and permanent injunction The revision petitioners/defendants 1 & 2 have filed the written statement in the month of July, 2018.

3. The case of the respondent/plaintiff is that a compromise had entered into between the petitioners and his family members of the defendants 1 to 5 in O.S.No.154 of 2017 dated 08.07.2017 and to declare the compromise memo as null and void, and permanent injunction restraining the defendants 1&2, their agents, servants to interfere with the plaintiff's peaceful possession and enjoyment of the property. Subsequently, written statement filed by the revision petitioners in the month of July, 2018. Thereafter, the revision petitioners have filed IA.No.632 of 2018 in O.S.No.90 of 2018 under Order 26 Rule 9 of CPC, before the District Court, Kangeyam dated 10.07.2018 to appoint an Advocate Commissioner to inspect and note down the physical features of the suit property with that of the adjacent property owned by the petitioners on the Eastern side and the respondent's property on the Western side, which would be valuable to appraise the factual aspects of

the lis and to file a detailed report and plan along with the photographs by an Advocate Commissioner.

4. The learned counsel for the petitioners submitted that the affidavit had been filed by the petitioners before the Court below in the aforesaid interlocutory application in IA.No.632 of 2018 and the reason stated in the affidavit is that the respondent/plaintiff has put up coconut trees and drainage canal in the suit property. The learned counsel for the petitioners further submitted that the petitioners have grown up coconut trees on the Eastern side, on the Western side and on the Southern side of the suit schedule mentioned property. Therefore, the physical features of the suit schedule property is disputed in the present suit. For the aforesaid reasons, the Court below erroneously dismissed the interlocutory application in I.A.No.632 of 2018 in O.S.No.90 of 2018 dated 22.01.2020 by the learned District Munsif, Kangayam. Therefore, the petitioners have come forward with the present CRP before this Court.

5. On a perusal of the order passed by the Court below in I.A.No.632 of 2018 in O.S.No.90 of 2018 dated 22.01.2020, that the

Court below had considered and taking note of the aforesaid facts and dismissed the application. The suit has been filed by respondent for declaration and permanent injunction and the real dispute involved in the said suit is with regard to 30 cents of the schedule mentioned property in the suit, as between the petitioners and the family members who have entered into compromise memo, is valid or the same is null and void. On perusal of the affidavit filed by the petitioner in the application, no sufficient cause has been established in the affidavit for appointment of the Advocate Commissioner to note down the physical features of the property and to submit a report in the above said suit.

6. Taking note of the aforesaid submissions of the learned counsel for the petitioners and the reason stated by the Court below, the contentions of the petitioners cannot be accepted and they are not sustainable either in law or on facts and therefore, no prima-facie case is made out and the Civil Revision Petition fails. Consequently, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.03.2020

Speaking order / Non-speaking order

Index : Yes / No

Internet : Yes
msm

To

The District Munsif, Kangayam.



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D.KRISHNAKUMAR, J.

msm



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