

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2020

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No.2055 of 2018

and

C.M.P.No.12240 of 2018

1. Mr.K.Hariram
2. Mrs.H.Thilaga

...Petitioners/Plaintiffs

Vs.

Mr.P.Boopathy

...Respondent/Defendant

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 03.02.2018 made in I.A.No.1322 of 2017 in O.S.No.442 of 2010 on the file of the Additional District Munsif Court, Alandur.

For Petitioners : Mr.John Patrick

For Respondent : Mr.B.L.Jayakandan

ORDER

The plaintiffs in O.S.No.442 of 2010 are on revision aggrieved by the order of the Learned Additional District Munsif, Alandur, dated 03.02.2018, dismissing their application in I.A.No.1322 of 2017 for examination of the Commissioner and Taluk Surveyor.

2. The suit is one for declaration of title and for permanent injunction restraining the defendant from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. It appears that a Commissioner was appointed in I.A.No.735 of 2010 filed by the plaintiffs and a report was filed along with a sketch. But the same was scrapped by the Trial Court and another Commissioner was appointed in I.A.No.550 of 2012 filed by the defendant. The said Commissioner inspected the property along with Taluk Surveyor and filed a report on 28.01.2016. Thereafter, I.A.Nos.329 and 330 of 2016 were filed by the plaintiffs seeking for a direction to the Commissioner to

re-inspect the property and to reject the report of the Commissioner filed in I.A.No.550 of 2012. These applications came to be dismissed on 15.09.2016. Aggrieved by the same, the plaintiffs preferred C.R.P.Nos.109 and 110 of 2017 before this Court and this Court dismissed the same. As per the order of this Court, the plaintiffs have filed their objections to the report of the Advocate Commissioner in I.A.No.550 of 2012 dated 18.02.2016. Thereafter, they preferred an application in I.A.No.1322 of 2017 seeking for examination of the Commissioner and Taluk Surveyor appointed in I.A.No.735 of 2010 and the same was dismissed by the Learned Additional District Munsif, Alandur, dated 03.02.2018. Aggrieved by the order, the petitioners/plaintiffs have come out with this application.

4. I have heard Mr.John Patrick, learned counsel appearing for the petitioners and Mr.B.L.Jayakandan, learned counsel appearing for the respondent.

5. Mr.John Patrick, learned counsel for the petitioners, would submit that the Trial Court was not right in dismissing the application for examination of the Advocate Commissioner. He would also submit that once the Advocate Commissioner is appointed and he files a report, it is open to the parties to demonstrate it by letting an evidence.

6. Contending contra, Mr.B.L.Jayakandan, learned counsel for the respondent, would submit that the petitioners are asking for examination of the Commissioner who filed report in I.A.No.735 of 2010, which has already been scrapped by the Trial Court and hence the trial court was right in rejecting the applications.

7. The examination of the Commissioner is one of the recognized methods to prove that the report is wrong. In this case, the report of the Advocate Commissioner pursuant to the order in I.A.No.550 of 2012 is already on record and this Court has permitted the petitioners to file their objections to the report in 2017. After filing their objections, the petitioners have come up with these applications seeking examination of the Commissioner and Taluk Surveyor in 2017, therefore, the application cannot said to be belated. The Learned District Munsif, Alandur, has dismissed the application on the ground that it is an attempt to drag on the proceedings. I am unable to agree with the said finding. The Civil Revision Petitions filed before this Court were dismissed in March 2017 and the application for examination of the Commissioner has been filed in December 2017, therefore, it cannot be termed as an attempt to drag on the proceedings.

8. Since I have concluded that the Trial Court is not right in dismissing the application for examination of the Commissioner and surveyor, the order of the Trial Court is set aside and the Civil Revision Petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed. The petitioners will have opportunity to examine the Commissioner and surveyor only with reference to the report filed in I.A.No.550 of 2012.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Additional District Munsif Court, Alandur.

+1cc to M/s.K.Rajasekaran, Advocate in SR.NO..35919

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