

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 15.12.2020

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.No. 2105 of 2020

and

C.M.P.No.13275 of 2020

Jayakumar

Petitioner/
16th Respondent/16th Defendants

Vs

1. KolanthaiyammalPetitioner/Plaintiff/1st Respondent

2. Chinnapaiyan

3. Mathiyan

4. Perumal

5. Kaliyammal

6. Chinna Nallammal

7. Sellie

8. Kandasamy

9. Chandra

10. Indrani

11. Unnamalai

12. Murugesan

13. Kannan

14. Arumugham

15. Chinnapillai

16. Pulliyannan

Respondents 1 to 15/
Defendants 1 to 15/
Respondents 2 to 16

Prayer: Civil Revision Petition filed under Article 226 of the Constitution of India, to set aside the impugned order dated 28.02.2020 in I.A.No.946 of 2017 in O.S.No.199 of 2014 on the file of the District Munsif Court, Mettur.

For petitioner : Mr.V.Sekar

Page numbers

ORDER

The 16th defendant is the Revision Petitioner herein. The first respondent herein filed the suit in O.S.No. 199 of 2014 for partition and separate possession of the suit property. The defendants filed the written statement alleging that there was a settlement in their favour and based upon the settlement, they are in possession of the property and in view of the possession, patta and chitta was received in their name and the suit is pending trial.

2. The respondent/plaintiff filed I.A.No.946 of 2017 for Ordering appointment of an Advocate Commissioner to note down the physical features of the ground, since the defendants are making construction and improvement during the pendency of the suit and hence, in the event of success, they should not claim any right over the land or any construction made by the contesting defendant during the pendency of the suit and if so done, their right will be affected. Therefore, to note down the physical features, he wanted an Advocate Commissioner to inspect the suit property and to file the physical features of the suit property as on the date of inspection and the same petition was filed under Order XXVI Rule 9 of C.P.C and the same was allowed. Hence, this Civil Revision Petition.

3. The learned counsel for the petitioner would contend that subsequent to the settlement effected in his favour, he has already put up superstructure and is also running business and hence this petition is intended to collect the evidence and hence prayed for setting aside the said order.

4. After hearing the submission of the learned counsels and also going through the pleadings filed before the trial Court, it is the specific case of the petitioner / 16th defendant that there was a settlement in their favour. Based upon the settlement, they are in possession and enjoyment of the suit property and obtained Revenue Records in their name and also made some increment in the property. However, the respondent/plaintiff has specifically averred in the application that during the pendency of the suit, the defendants were making improvement by putting up a construction and in the event of success of the suit, they should not take advantage of the same in final decree proceedings. Therefore, report on the physical features of the suit property is necessary and the trial Court has rightly allowed the application and appointed an Advocate Commissioner and the same cannot be found fault with.

5. Hence, this Court is of the considered view that in order to determine the rights of the parties and to maintain the

Page numbers

balance in the partition suit, the trial Court has rightly ordered the application and the same cannot be said to be erroneous. Furthermore, the suit is only in pre-trial status and hence I am of the considered view that the order of the trial Court does not suffer from any irregularity or illegality warranting interference in the Revisional Jurisdiction.

6. This Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kmm

To

The District Munsif Court,
Mettur.

+1cc to M/s.V.Malar, Advocate SR.41027

AD(CO)
CB(20/01/2021)

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Page numbers