



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.R.P. (MD) .No.433 of 2020

and

C.M.p. (MD) .No.2569 of 2020

1.M.Rama Lakshmi Ammal

2.M.Ramachandran

... Petitioners/Respondents
/Defendants

Vs.

1.S.Muthammal

2.S.Rani

3.S.Meena

... Respondents/Petitioners
/Plaintiffs

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order made in I.A.No.267 of 2018 in O.S.No.185 of 2018 dated 19.10.2019 on the file of the learned Sub Judge, Tiruchendur.

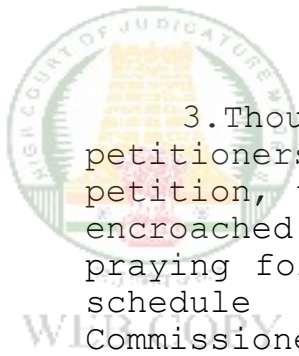
For Petitioners : Mr.P.Balakrishnan
for S.R.Anbarasu

For Respondents : Mr.G.Anbu Saravanan

O R D E R

This Civil Revision Petition is filed against the order dated 19.10.2019 passed in I.A.No.267 of 2018 in O.S.No.185 of 2018 by the learned Sub Judge, Tiruchendur, Thoothukudi District.

2.The respondents are the plaintiffs have filed a suit in O.S.No.185 of 2018 for declaration and recovery of possession of the property and also declared the sale deed dated 17.02.2014 is null and void. During the pendency of the suit, the respondents herein had filed an application in I.A.No.267 of 2018 for appointment of an Advocate Commissioner to measure the property with the help of the qualified Surveyor and file a report along with Rough Sketch. The said petition was allowed and the Advocate Commissioner was appointed by the trial Court. Challenging the said order, the petitioners are before this Court.



3. Though the learned counsel appearing for the revision petitioners is not present, he has raised several grounds in his petition, wherein it is stated that the respondents/plaintiffs have encroached the entire schedule property and on this score, they are praying for the relief of declaration and recovery of entire plaint schedule property and hence, the appointment of Advocate Commissioner is not necessary to find out the possession or for collecting the evidence. Therefore, the order passed by the trial Court warrants interference.

4. The learned counsel appearing for the respondents submitted that the respondents have filed the suit for declaration and recovery of possession and in order to find out the area which was encroached and to measure the same with the help of qualified surveyor, appointment of Advocate Commissioner is necessary. Unless it is measured by the qualified surveyor, the extent of encroachment cannot be identified. Therefore, the order passed by the trial Court does not warrant interference.

5. Heard the learned counsel appearing for the petitioners and the learned counsel appearing for the respondents.

6. Admittedly, the respondents/plaintiffs have filed the suit in O.S.No.185 of 2018 before the Sub-Court, Tiruchendur. Along with the said suit, they have filed an application in I.A.No.267 of 2018 for appointment of Advocate Commissioner to measure the property with the help of qualified surveyor and file a report. Though the main objection for the revision petitioners/defendants is that, the respondents/plaintiffs have encroached the property and they have also filed an application for appointment of Advocate Commissioner. According to the petitioners, though the respondents have encroached the suit property, they have not only filed a suit for declaration but also for recovery of possession. Therefore, in order to find out the truth and to render justice to the parties, the trial Court felt that the appointment of Advocate Commissioner is necessary and allowed the said application.

7. Considering the facts and circumstances of the case and also the nature of the claim in the suit, there is no perversity in the order of the trial Court. This Court does not find any reason to interfere with the order of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1. The Subordinage Judge,
Tiruchendur.

2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai (2-Copies)

+2 CC to M/s.G.ANBUSARAVANAN, Advocate (SR-10885[F] dated
10/03/2020)

+1 CC to M/s.S.R.ANBARASU, Advocate (SR-10974[F] dated 11/03/2020)

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