



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2021

CORAM :

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.2145 of 2021

and

C.M.P.No.16242 of 2021

1.S.Thangavelu
2.T.K.Rajeswari
3.T.Deepan

... Petitioners/Defendants

Vs

M/s.Rangavale Industries,
A Partnership Firm
Represented by its partner V.Rangasamy
S/o.Vellingiri
S.F.No.9/1A2,
Mettupalayam Road,
Thudiyalur Post,
Coimbatore - 641 034.

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the docket orders of the Learned III Additional District Munsif of Coimbatore dated 11.02.2020 in I.A.No.03 of 2019 in O.S.No.1096 of 2019 and allow the above Civil Revision Petition.

For Petitioners : Mr.J.Hariharan.

For Respondent : Mr.K.Venkata Subban

O R D E R

This Civil Revision Petition is filed challenging the order passed on 11.02.2020 in I.A.No.03 of 2019 in O.S.No.1096 of 2019 by the Learned III Additional District Munsif, Coimbatore.

2.The Learned Counsel for the Petitioner submitted that the Respondent has filed a Suit in O.S.No.1096 of 2019 against the Petitioners seeking the following reliefs;



WEB COPY

a)Permanent injunction restraining the defendants, their agents, representatives, employees or any person/s claiming under or through them from in any way obstructing or hindering the fencing of the property described in the schedule hereunder belonging to the plaintiff, particularly on the south abutting the defendants property in SF No.9/2B3;

b)Permanent injunction restraining the defendants, their agents, representatives, employees or any person/s claiming under or through them from in any way obstructing or interfering with plaintiff's peaceful possession and enjoyment of the property described in the schedule hereunder belonging to the plaintiff;

c)directing the defendants to pay the plaintiff the cost of the suit."

Pending the Suit, the Respondent filed I.A.No.03 of 2019 under Order 26 Rule 9 and Section 151 of Civil Procedure Code for appointing an Advocate Commissioner to survey, measure and ascertain the extents/boundaries of the suit property and that of the respondents, with the assistance of a Taluk surveyor and file a report. This Petition was contested by the Petitioner. However, the Learned III Additional District Munsif, Coimbatore has allowed the Petition and appointed an Advocate Commissioner to inspect and measure the extents/boundaries of the suit property along with a qualified surveyor. Against the said order, the present Civil Revision Petition is preferred.

3.The Learned Counsel for the Petitioner submitted that filing of an Application for appointment of Advocate Commissioner to inspect and measure the properties of both the parties in a Suit for injunction was not warranted. The very filing of application is nothing but an exercise intending to collection of evidence and that is impermissible in law. It is further submitted that the Respondent has no property beyond the southern compound wall. Therefore, he prayed for setting aside the order of the Learned III Additional District Munsif, Coimbatore and for dismissing the Petition.

4.Mr.K.Venkata Subban, Learned Counsel appeared for the caveator / Respondent countered the submissions of the Learned Counsel for the Petitioner stating that in between the lands purchased by the Petitioners / defendants and the compound wall of the Respondents, there exists the land of the respondent. In other words, a portion of the property viz., lands comprised in S.F.No.9/1A2 is located beyond the compound wall on the south.



This extent of land beyond the compound wall and on north of the Petitioners' / defendants' land do not belong to them. In fact, the plaintiff, after due intimation to the defendants arranged for and carried out a digital survey on 20.02.2019. A copy of the plan of such digital survey was shared with the defendants. Thereafter, in June 2019, the plaintiff wanted to fence the suit property belong to them, particularly, the portion located beyond the compound wall on the South.

5.This pleadings makes it clear that the case of the Respondent is that there is some portion of land left beyond the southern compound wall. Therefore, when the Petitioners / Defendants tried to fence this land, Suit came to be filed.

6.The Learned Counsel for the Respondent/caveator also brought to the notice of this Court an interim report of the Advocate Commissioner, wherein it is observed that advocate commissioner found that there is some portion available to the Respondent beyond the southern compound wall. However, this Court is not inclined to discuss about the commissioner's report now when the matter is pending before the trial Court. It is ultimately for the trial Court to consider the commissioner's report. The issue is that whether the Respondent has any property left beyond his southern compound wall. Learned Counsel for the Respondent submitted that space was left for draining the rain water. This disputed fact has to be gone into by the Court. Considering the intricate dispute involved in this case, this Court is of the considered view that assistance of Advocate Commissioner to inspect the property along with surveyor is absolutely necessary to resolve the issue. In this view of the matter, this Court does not want to interfere with the order of the Learned District Munsif, Coimbatore and the same is confirmed.

7. Resultantly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ay/ep



To

The III Additional District Munsif,
Coimbatore.

WEB COPY

+1CC to Mr.V.Nicholas, Advocate, Sr.No.50434

+1CC to M/s.Sarvabhauman Associates, Advocate, Sr.No.50451

C.R.P.No.2145 of 2021
and
C.M.P.No.16242 of 2021

NRJK (CO)
K.RK. (27.10.2021)