

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.2903 of 2015
& M.P.No.1 of 2015

E.Baskar

... Petitioner

Vs

1.Venkatesan

2.Subramani

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and decree dated 30.06.2015 made in I.A.No.1185 of 2014 in O.S.No.135 of 2014 on the file of the District Munsif Court, Tirutani.

For Petitioner : Mr.A.Gouthaman

For Respondents : S.Senthilnathan

ORDER

The Civil Revision Petition is arising out of the order and decree dated 30.06.2015 made in I.A.No.1185 of 2014 in O.S.No.135 of 2014 on the file of the District Munsif Court, Tirutani, thereby dismissing the appointment of Advocate Commissioner along with Taluk Surveyor filed by

the petitioner herein.

2.The respondents are the plaintiffs and the petitioner herein is the defendant.

3.The plaintiffs filed a suit for declaration and injunction in respect of the suit schedule property. According to the defendant the suit property originally purchased by the father of the plaintiffs by the sale deed dated 17.07.1971. Thereafter their father executed settlement deed in favour of the plaintiffs by a registered sale deed dated 13.05.1986. As per the settlement deed measurement was shown as east to west by 20 feet and north to south by 165 feet, whereas the plaintiffs filed a suit for declaration claiming title on the west to eastern side for 23 feet, thereby claiming title about 220 sq.ft.,. Therefore, the defendant filed a petition for appointment of Advocate Commissioner along with Taluk Head Surveyor, to inspect the suit property and to measure the same and to locate the suit schedule properties as per the FMB.

4.The learned counsel for the petitioner would submit that beyond the settlement deed, now the plaintiffs claimed title in respect of the C schedule property. Even according to the sale deed as well as the settlement

deed, the measurement shown on the west to eastern side only 20 feet, whereas, they claim 23 feet, thereby claiming 220 feet excessively. Therefore, it is just and necessary to appoint Taluk Surveyor to survey the suit property and it would also avoid multiplicity of proceedings in future.

5. On perusal of the affidavit filed in support of the petition for appointment of Advocate Commissioner revealed that the C schedule property is belong to the defendant and to locate the C schedule property as per the FMB and to measure the said property the defendant sought for appointment of Taluk Head Surveyor. Admittedly, the plaintiffs filed a suit for declaration and injunction, on the strength of the settlement deed executed by their father, on 13.05.1986. Therefore, the suit can be decreed only as per the settlement deed and whatever the measurement for the suit schedule property can be decreed in their favour. Beyond the settlement deed plaintiffs are not entitled for decree of declaration. Further when the defendant is claiming title over the C schedule property, without filing any counter claim in the suit filed by the plaintiffs they cannot sought for appointment of Taluk Head Surveyor to measure the property. It amounts to collection of evidence and as such the trial Court has rightly dismissed the

petition. Thereby, this Court finds no irregularity or infirmity in the order of the trial Court made in I.A.No.1185 of 2014 in O.S.No.135 of 2014 on the file of the District Munsif Court, Tirutani, dated 30.06.2015. Accordingly the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
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To
The District Munsif, Tiruttani.



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G.K.ILANTHIRAIYAN.J,



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