

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(PD).No.3172 of 2015

and

MP.No.1 of 2015

1.Rajeswari

2.Shankar

3.Ananda Murugan

4.T.G.Saravanan (Died)

[4th petitioner died. 5th petitioner
LR of the deceased 4th petitioner as
per the memo dated 24.11.2020 in
CSR.No.18302- vide court order
dated 02.12.2020]

5.S.Kamalakannan

..Petitioners

Vs.

1.Gopi

2.Manoharan

..Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, praying to allow the Revision by setting aside the order and decretal order dated 09.02.2015 in I.A.No.92 of 2013 in O.S.No.39 of 2011 on the file of the Subordinate Judge, Tiruvallur.

For Petitioners : Mr.P.B.Ramanujam

For Respondents : Mr.K.Balaji

ORDER

This Civil Revision Petition is directed as against the fair and decreetal order in I.A.No.92 of 2013 in O.S.No.39 of 2011 on the file of the Subordinate Judge, Tiruvallur, thereby dismissing the petition filed by the petitioners to appoint Advocate Commissioner with the assistance of Surveyor to measure and demarcate the suit property.

2. The petitioners who are the plaintiffs have initially filed a suit for declaration and injunction in respect of the suit property as against the respondents herein. Along with the plaint, they have also filed a petition to appoint Advocate Commissioner to note down the physical features of the suit property. Accordingly, the Advocate Commissioner was appointed and he filed a report after noting down the physical features of the suit property along with the rough sketch.

3. According to the petitioners, while pending suit, the respondents encroached some portion of the property of the plaintiffs and also constructed compound wall, therefore, the petitioners are constrained to file another petition for appointment of Advocate Commissioner with the help of the Surveyor to measure and demarcate the suit property. The learned counsel for the petitioners pointed out that even in the written statement filed by the

respondents they have categorically stated that the Advocate Commissioner report is no way helpful to the plaintiffs without measuring the property with the assistance of Surveyor.

4. The learned counsel for the petitioners further submitted that the trial court wrongly mis-construed the Advocate Commissioner's report as if the respondents are the adjacent property owners on the North side of the suit property. The Advocate Commissioner report revealed that there was a fencing. The respondents owned the South side of the suit property and they encroached some of the portion on the North side of the suit property.

5. The learned counsel for the respondents would submit that already the Advocate Commissioner was appointed for the purpose of noting down the physical features alone. Even at the time of filing the plaint there is an averment that the respondents encroached some portion of the suit property and constructed compound wall in the suit property. Therefore, the petitioners ought to have sought for appointment of Advocate Commissioner to survey the land with the help of Surveyor.

6. Heard Mr.P.B.Ramanujam, learned counsel for the petitioners and Mr.K.Balaji, learned counsel for the respondents.

7. Initially the suit was filed for declaration and injunction. Subsequently, according to the petitioners the respondents herein have constructed compound wall on the South side of the suit property. Therefore, the petitioners were constrained to amend the plaint for the prayer of mandatory injunction. Accordingly, the plaint was also amended. Therefore, the petitioners filed a petition for appointment of Advocate Commissioner with the help of the Surveyor to measure the suit property and also demarcate the same.

8. The trial court based on the earlier Advocate Commissioner's report dismissed the petition. A perusal of the written statement shows that the defendants have stated that the report of the Advocate Commissioner is no way helpful to the plaintiffs without measuring the suit property with the assistance of the Surveyor. Therefore, no prejudice would be caused if the Surveyor surveyed the suit property.

9. In view of the above discussion, the order made in I.A.No.92 of 2013

in O.S.No.39 of 2011 on the file of the Subordinate Judge, Tiruvallur is liable to be set aside and it is accordingly set aside. This Civil Revision Petition is **allowed**. No costs. Consequently, the connected miscellaneous petition is closed. It is made clear that the trial court is directed to appoint Advocate Commissioner with the assistance of surveyor only for the purpose of surveying the land and demarcate the same in accordance with their respective sale deeds.

06.01.2021

dsa

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

To

The Subordinate Judge, Tiruvallur.



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G.K.ILANTHIRAIYAN,J.

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