

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2021

CORAM

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

CRP.PD.No. 1245 of 2016

and

CMP.No.6797 of 2016

1. Narayanan

2. Perumayee

3. Thirumurugan

4. Kanagaraj

... Petitioners

Vs.

Thangavelu (Died)

1. Amirthambal

2. Karthikeyan

3. Thiruvenkadam

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 16.02.2016 made in I.A.No.911 of 2015 in O.S.No.248 of 2013, on the file of the District Munsif Court, Mettur.

For Petitioners : Mr.K.Sathish Kumar

For Respondents : Mr.R.Subramanian

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.911 of 2015 in O.S.No.248 of 2013 dated 16.02.2016 on the file of the learned District Munsif, Mettur, thereby, allowing the petition for appointment of Advocate Commissioner to inspect the suit property with the help of Surveyor and file a report.

2. The petitioners are the defendants and the respondents are the plaintiffs. The respondents filed a suit for declaration and recovery of possession, in respect of the suit properties. According to the plaintiffs, the B-schedule property situated in the A-schedule property was encroached by the defendants and as such, they filed an application for appointment of Advocate Commissioner to inspect the suit properties with the help of Surveyor, to measure the same as per the registered Sale Deed and to file a report.

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3. The learned counsel for the petitioners submitted that the petitioners/defendants denied the title of the plaintiffs/respondents and as

such, there is no question of encroachment and the appointment of Advocate Commissioner would amount to collection of evidence.

4. On a perusal of the plaint, it is seen that the respondents filed the said suit for declaration and recovery of possession, in respect of the B-schedule property situated in the A-schedule property alleging that it was encroached by the petitioners herein. Therefore, the respondents filed a petition for appointment of Advocate Commissioner to measure the suit properties. The Court below allowed the petition and appointed the Advocate Commissioner to inspect and measure the suit property with the help of the Surveyor as well as the Village Administrative Officer and also find out any encroachment and file a report along with the plan. Admittedly, the suit for recovery of possession, in respect of B-schedule property. Therefore, it would not amount to collection of evidence and this Court finds no irregularity or infirmity in the order passed by the Court below.

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G.K.ILANTHIRAIYAN,J.

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5. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

16.02.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

The District Munsif Court, Mettur.



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