



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

C.R.P. (P.D) No.3563 of 2016
and C.M.P.No.18189 of 2016

1.M.Chandrasekar
2.C.Mahalakshmi

...Petitioners

Vs

P.Sekar

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Indian Constitution of India to set aside the fair and decreetal order dated 01.09.2015 made in I.A.No.720 of 2015 in IA.No.196 of 2015 in O.S.No.76 of 2015 on the file of the First Additional District Munsif of Erode.

For Petitioners : Mr.C.Ramaraj

For Respondents : Mr.M.Karthik
for M/s I.C.Vasudevan

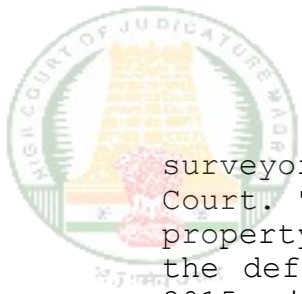
O R D E R

(The case has been heard through video conference)

This Civil Revision Petition has been filed to set aside the order dated 01.09.2015 made in I.A.No.720 of 2015 in IA.No.196 of 2015 in O.S.No.76 of 2015 on the file of the Ist Additional District Munsif of Erode.

2.The petitioners are the defendants in the suit in O.S.No.76 of 2015 on the file of Ist Additional District Munsif, Erode. The respondent is the plaintiff herein. The plaintiff has filed a suit to deliver vacant possession to the extent of 260 sq ft., marked as ''KLC'' in the plaint plan with a mandatory injunction, to direct the defendants to remove the encroachment made in the suit property.

3.Pending Suit, plaintiff filed an application to appoint an Advocate Commissioner to measure the property with the help of a



surveyor in I.A.No.196 of 2015 which was allowed by the trial Court. The Advocate Commissioner was appointed, he inspected the property with the help of surveyor and filed a report, for that the defendant filed an objection. Again, he filed I.A.No.720 of 2015 with a prayer to reissue the Commissioner warrant to the same Commissioner and direct him to visit and measure the suit property with the help of the present Taluk surveyor and to file a report. After hearing learned counsel for the parties the learned trial Judge dismissed the petition on the ground that whether the Commissioner report has to be accepted or not has to be decided at the time of the trial. Therefore, the Commissioner's warrant need not be re-issued and the property need not resurveyed. Aggrieved by the order of the trial Court, the first defendant filed the present Civil Revision Petition.

4. Heard Mr.C.Ramaraj learned counsel for the petitioners and Mr.M.Karthick for M/s.I.C.Vasudevan learned counsel for the respondent and perused the materials available on record.

5. Admittedly, the plaintiff/respondent filed the suit for delivery of vacant possession to the extent of 260 sq.ft marked as ''KLC'' in the plan with a prayer for mandatory injunction directing the defendant to remove the encroachment in the suit property and also with a prayer for permanent injunction against the defendants not to interfere with the suit property mentioned as ''ABCD'' in the plaint plan. For surveying the property and to note the physical feature of the property. The plaintiff filed an application for appointment of an Advocate Commissioner in I.A.No.196 of 2016 which was allowed by the trial Court. The advocate Commissioner was appointed and he visited the property to see the existing physical features of the suit property and measured the suit properties with the help of a retired surveyor in the presence of Revenue Village Administrative Officer and filed a detailed report. For that report, this Revision Petitioner filed an objection. The revision petitioners/defendants filed a written statement contending that the plaintiff has encroached the property of the defendants on the southern portion.

6. Admittedly, the properties have been surveyed by the Advocate Commissioner with the help of a retired surveyor and filed a report with a plan. The revision petitioners/defendants also filed an objection to the Commissioner report. The commissioner is not the competent person to collect materials to prove who is in possession of the property. In this case, there is an allegation of encroachment which was subsequently noted by the Commissioner with the help of the surveyor.



7. Admittedly, the retired surveyor was engaged by the Advocate Commissioner not the present Taluk surveyor who is working now. For this reason alone, the Commissioner warrant need not be reissued. The parties are open to let evidence before the trial Court with regard to possession. At the time, the trial Court has to consider the Commissioner report and objection and may come to a conclusion whether there was any encroachment and whether the plaintiff is entitled to delivery of vacant possession and for mandatory injunction coupled with permanent injunction. Under these circumstances, I find no error in the order of the trial Court.

8. Hence, this Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

vsn

To

The I Additional District Munsif,
Erode.

+1cc to Mr. I. C. Vasudevan, Advocate, S.R.No.30489
+1cc to Mr. M. Guruprasad, Advocate, S.R.No.30879

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UM (CO)
HS (03/08/2021)