

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

**CRP (NPD).No.2419 of 2018
and
CMP.No.14888 of 2018**

1. Ponnaya
2. N.Valumani
3. Mani @ Amutha

... Petitioners

Vs.

1. Komarasamy Gounder
2. M.Subramanian

... Respondents

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 21.08.2017 in E.A.No.53 of 2012 in E.P.No.10 of 2004 in O.S.No.482 of 1995 on the file of the District Munsif, Sankarai and allow the Civil Revision Petition.

For Petitioners : Mr.S.Kalyanaraman

For Respondents : Notice Served (No Appearance)
(for R-1)
: Not Ready in Notice
(No Appearance) for R-2

ORDER

This Civil Revision Petition is filed as against the fair and decretal order passed in E.A.No.53 of 2012 in E.P.No.10 of 2004 in O.S.No.482 of 1995 dated 21.08.2017 on the file of the learned District Munsif, Sankarai, thereby dismissing the petition seeking appointment of Advocate Commissioner to note down the existing buildings and the area of the mining and the physical features of the petition mentioned property with assistance of the V.A.O with qualified surveyor and qualified engineer to value the building and mines in the petition mentioned properties and to file report with plan.

2. The petitioners are the judgment debtors and the respondents are the decree holders. The respondents filed a suit for recovery of money. The same was decreed by the judgment and decree dated 26.09.2003. On the strength of the decree, the respondents filed a petition in R.E.P.No.10 of 2004 to execute the decree, the property was brought for auction and the

second respondent herein purchased the property for valid sale consideration and the sale certificate was also issued in his favour. While being so, the petitioners filed a petition under Section 47 of CPC in R.E.A.No.32 of 2010 and it is pending. While pending the said application, the petitioners also filed a petition seeking appointment of Advocate Commissioner to note down the existing buildings and the area of the mining and the physical features of the petition mentioned property with assistance of the V.A.O with qualified surveyor and qualified engineer to value the building and mines in the petition mentioned properties and to file report with plan. The Court below rightly dismissed the petition for the reason that the appointment of Advocate Commissioner is nothing but collection of evidence. If really there is mines and terraced house in petition mentioned property, the petitioners can very well produce documentary evidence on their side to prove the same in the application filed under Section 47 of CPC. Therefore, it is nothing but collection of evidence and this Court finds no merits in this petition and also finds no infirmity or illegality in the order passed by the Court below.

G.K.ILANTHIRAIYAN,J.

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3. Accordingly, this Civil Revision Petition is dismissed.
Consequently, the connected Miscellaneous Petition is closed. No costs.

28.07.2021

Speaking/Non-speaking order

Index : Yes/No

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To

1. The District Munsif, Sankarai.
2. The Section Officer,
V.R. Section, High Court of Madras.

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