

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2021

CORAM :

THE HONOURABLE MR. JUSTICE G. CHANDRASEKHARAN

C.R.P. (PD) No.1654 of 2019
and
C.M.P.No.10755 of 2019

1.Sugumaran
2.Senthilkumaran

... Revision Petitioners

Vs.

1.Daiveegan
2.Sumathi
3.Gandhimathi
4.Krishnamoorthi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decretal order in I.A.No.685 of 2018 in I.A.No.538 of 2013 in O.S.144 of 2013 dated 03.12.2018 on the file of the learned Principal District Munsif, Tirukoilur.

For Petitioner : Mr.N.Suresh

For R1 to R4 : Mr.H.Rajesh

ORDER

(Through Video Conferencing)

This Civil Revision Petition is filed challenging the order passed in I.A.No.685 of 2018 in I.A.No.538 of 2013 in O.S.No.144 of 2013, on 03.12.2018, by the learned Principal District Munsif, Thirukoilur.

2.Learned counsel for the petitioners submitted that the petitioners filed the suit in O.S.No.144 of 2013 against the respondents, seeking the relief of declaration of title over the “C” Schedule Property, grant of permanent injunction and for costs. An application in I.A.No.538 of 2013 was also filed under Order 39 Rule 1 & 2 of CPC, seeking temporary injunction till the disposal of the suit in respect of the “C” Schedule Property, restraining the respondents, their men and agents from trespassing into the “C” Schedule Property.

3.It is submitted by the learned counsel for the petitioners that, in the enquiry in I.A.No.538 of 2013, the respondents produced the sale deed, dated 23.01.1936, in favour of Michiammal, in support of their case. In this

sale deed, a registered copy of which was filed as Ex.R10, the East-West measurement was altered as 36 feet from 30 feet. As per the original document and the records available with the Registration Department, the measurement of the “C” Schedule Property is 30 feet East-West and 45 feet North-South. However, the respondents have deliberately altered the measurements as 36 feet in the place of 30 feet. He further submitted that the petitioners obtained the Encumbrance Certificates for this property and the original Encumbrance Certificates were produced as Exs.A10 and A11. The Encumbrance Certificates clearly show that the East-West measurement of “C” Schedule Property is 30 feet and North-South measurement is 45 feet. Therefore, it is absolutely necessary for the petitioners to summon the Sub-Registrar, Aragandanallur, to establish this discrepancy in the measurement. For this purpose, it is necessary to reopen the case of the petitioners. However, it is submitted that the learned Judge without considering the genuine claim of the petitioners, dismissed the petition. Therefore, the Civil Revision Petition.

4.In response, the learned counsel for the respondents opposed this petition and submitted that, reopening of the case is not necessary and the

alleged correction was not made by the respondents and the reopening petition was filed only to drag on the proceedings.

5.Considered the rival submissions and perused the records.

6.From a perusal of the facts of the case from the submissions of the parties, it is clear that there is a serious dispute with regard to the East-West measurement of “C” Schedule Property. From the photocopy of the certified copy of the registered sale deed produced in the form of Typed Set of Papers, it is seen that the East-West measurement is given as 36 feet. However, the photocopy of the Encumbrance Certificate for the same property shows the East-West measurement as 30 feet. Obviously, there is a discrepancy with regard to the extent of East-West measurement of “C” Schedule Property. As rightly claimed by the petitioners, this discrepancy can be resolved, if the Aragandanallur Sub-Registrar is directed to produce the relevant Registers and examined. Otherwise, this discrepancy will continue forever and it will ultimately affect the rights and liabilities of the parties. It would also be difficult for the Court to adjudicate the matter correctly.

7.In this view of the matter, this Court is of the considered view that I.A.No.685 of 2018 ought to have been allowed by the learned Principal District Munsif, Thirukoilur. Therefore, the order of the learned Principal District Munsif, Thirukoilur, is set aside and I.A.No.685 of 2018 in I.A.No.538 of 2013 in O.S.No.144 of 2013 is allowed. The petitioners are permitted to reopen the case and summon the Sub-Registrar, Aragandanallur, to substantiate their case.

8.Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

21.09.2021

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Internet : Yes

Index : Yes / No

Speaking order / Nonspeaking order

G. CHANDRASEKHARAN, J.

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To

The Principal District Munsif,
Tirukoilur.



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