

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(N.P.D).No.664 of 2016
and C.M.P.No.3421 of 2016

1.Nallathambi
2.N.Prabakaran

...Petitioners

Vs.

1.Mani
2.Muthu

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 20.11.2015 in R.E.A.No.16 of 2014 in R.E.P.No.39 of 2011 in O.S.No.189 of 2000, passed by the District Munsif Court, Sankari.

For Petitioners : Mr.T.Karunakaran

For Respondents : No appearance

ORDER

This Civil Revision Petition is arising out of the fair and decretal order dated 20.11.2015 in R.E.A.No.16 of 2014 in R.E.P.No.39 of 2011 in O.S.No.189 of 2000, passed by the District Munsif Court, Sankari, thereby allowed the petition for appointment of Advocate Commissioner in the

execution proceedings.

2.The petitioners are the plaintiffs. The respondents are defendants in the suit filed by the petitioners for permanent injunction, in respect of the suit property.

3.While pending the suit, an application was filed by the petitioners for appointment of Advocate Commissioner. The trial Court also appointed the Advocate Commissioner and he also filed his report and the suit was decreed by order dated 30.11.2007.

4.Even then the respondents attempted to trespass into the petitioners property and also interfering with their peaceful possession and enjoyment of the suit property. Therefore, the petitioners filed execution proceedings in R.E.P.No.39 of 2011 on the file of the District Munsif Court, Sankari. In the execution proceedings, one of the petitioners examined as P.W.1 and when the matter was posted for evidence of P.W.1, the respondents filed a petition for appointment of Advocate Commissioner, to ascertain whether any portion of the suit property was encroached by the respondents are not. In the main suit itself already Advocate Commissioner was appointed and filed the detailed report and on the report submitted by

the Advocate Commissioner, no one has filed any petition as against the report of the Advocate Commissioner. The suit was also decreed in favour of the petitioners.

5.In the execution proceedings, when the petitioner was examined as P.W.1, the respondent has filed a petition for appointment of Advocate Commissioner is only to collect material evidence. When the trial Court itself appointed Advocate Commissioner, while pending the suit and he also filed report by noting the physical features of the suit property, there is no necessity for appointment of another Advocate Commissioner, by the execution Court.

6.Further, the case of the petitioners is that after decree in the suit, the respondents trespassed into the suit property on 17.11.2011 and destroyed the ridges of the suit property. Thereafter, it was stopped by the petitioners and they filed the execution proceedings. They also produced photographs to show that the suit property was damaged by the respondents.

7.Under these circumstances, there is no necessity for the execution Court to appoint the Advocate Commissioner, which amounts to collection of evidence. The respondents ought to have prove their evidence

only by letting evidence. Therefore, the order dated 20.11.2015 in R.E.A.No.16 of 2014 in R.E.P.No.39 of 2011 in O.S.No.189 of 2000, passed by the Court below is liable to be set aside.

8.Accordingly, the order dated 20.11.2015 in R.E.A.No.16 of 2014 in R.E.P.No.39 of 2011 in O.S.No.189 of 2000 on the file of the District Munsif Court, Sankari, is set aside and the Civil Revision Petition is allowed. No costs. Consequently connected miscellaneous petition is closed.

12.02.2021

Index:Yes/No
Speaking Order: Yes/No
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To
The District Munsif Court, Sankari.

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G.K.ILANTHIRAIYAN,J,

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