

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2021

CORAM

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

CRP.PD.No.544 of 2018

and

CMP.No.2905 of 2018

1. K.R.Sathyanarayanan
2. K.S.Ramachandran

... Petitioners

Vs.

1. K.Krishnan
2. K.Palani
3. K.Suresh
4. K.Ramesh
5. K.Bhagyaraj

... Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.11.2017 passed in I.A.No.548 of 2017 in O.S.No.122 of 2014 on the file of the District Munsif Court, Palakode and allow the above Civil Revision Petition.

WEB COPY

For Petitioners : Mr.S.Ravi

For Respondents : Mr.R.Selvakumar
(for R1 to R5)

ORDER

This Civil Revision Petition is directed against the fair and decretal order dated 06.11.2017 passed in I.A.No.548 of 2017 in O.S.No.122 of 2014 on the file of the District Munsif Court, Palakode, thereby dismissing the petition for appointment of Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for declaration and injunction in respect of the suit property. While pending the suit, the petitioners also filed a petition for appointment of Advocate Commissioner to inspect the suit property and to note down the physical features with the help of the Surveyor and Village Administrative Officer. The said petition was allowed and the Advocate Commissioner was appointed. The Advocate Commissioner visited the suit property with the help of Surveyor and Village Administrative Officer and found that as per the sale deed, the boundaries are mentioned only on three sides and also there is no clear boundaries in respect of the suit property and as such, the Surveyor could not measure the property. Accordingly, the Advocate Commissioner

returned his warrant by the report dated 19.11.2015. The petitioners filed their objections and thereafter again they filed a petition for appointment of Senior Advocate Commissioner for the very same purpose.

3. The learned counsel for the petitioners submitted that the petitioners and the defendants purchased the property comprised in S.Nos.380 and 381, which are lying adjacent to each other. The petitioners have purchased the property ad-measuring 2.37 acres comprised in S.No.380 and ad-measuring 63 cents comprised in S.No.381. The respondents have purchased the property ad-measuring 2.51 acres comprised in S.No.380 and 39 cents comprised in S.No.381. The respondents filed their written statement and specifically avered that the total extent comprised in S.Nos.380 and 381 is 2 acres and 90 cents only and as such, the petitioners have no title over the property comprised in S.Nos.380 and 381. Therefore, the petitioners obtained information under the Right to Information Act and found that the total extent is nearly 6 acres in both Survey Numbers and as such, they filed a petition for appointment of Advocate Commissioner to note down the physical features of the suit property with the help of surveyor. He further submitted that, unfortunately,

the sale deed did not contain the boundaries properly and only to demarcate the suit property, the petitioners requested to appoint an Advocate Commissioner.

4. Per contra, the learned counsel appearing for the respondents submitted that the suit is not filed for demarcating the suit property. According to the petitioners they purchased the suit property by the registered sale deed dated 13.06.2002. While being so, the respondents were trying to encroach some portion of the property and as such, they filed a suit for declaration and bare injunction. There is no allegation of encroachment by the respondents and admittedly their sale deed is missing with one side boundary. If at all they filed a suit for demarcation of the suit property, the Advocate Commissioner can be appointed with the help of surveyor to demarcate the property. Therefore, the present application for appointment of Advocate Commissioner is nothing but collection of evidence.

5. Heard the learned counsel for the petitioners as well as the learned counsel for appearing for the respondents.

6. The petitioners filed a suit for declaration and bare injunction. While pending the suit, they filed a petition for appointment of Advocate Commissioner and accordingly the Advocate Commissioner was appointed to inspect the suit property and note down the physical features of the suit property with the help of the Surveyor and Village Administrative Officer. While visiting the property with the help of surveyor, the Surveyor found that the sale deed produced by the petitioners did not contain 4 boundaries and as such, it is not possible to survey the land in accordance with their sale deed and returned the warrant. Again, the petitioners filed another application for appointment of Advocate Commissioner for the very same purpose.

7. The learned counsel for the petitioners submitted that only to demarcate the property, the petitioners sought for appointment of Advocate Commissioner with the help of Surveyor. Admittedly, the petitioners have not filed the suit for demarcating the suit property and they filed a suit for only declaration and injunction. That apart, there is no specific allegations that the respondents encroached some portion of the suit property in the

plaint averments. If at all the petitioners wanted to demarcate the suit property they can very well approach the Revenue Officials for demarcating the suit property in accordance with their sale deed. Therefore, the present application for appointment of Advocate Commissioner is nothing but an attempt to collect evidence and the Court below rightly dismissed the petition. Therefore, this Court finds no infirmity or illegality in the order passed by the Court below.

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

22.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

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

G.K.ILANTHIRAIYAN,J.

Kv



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