

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1227 of 2017
and C.M.P.No.5802 of 2017

- 1.P.Balasubramani
- 2.P.Shanmugam
- 3.Mallika
- 4.Karthick
- 5.Saveetha
- 6.Suryanarayanan

... Petitioners

- 1.Ganesan (died)
- 2.Ishwarya
- 3.Minor.Hariharan
- (Rep. by guardian and father
Madheswaran)

- 4.Parimala
- 5.G.Srinivasan

... Respondents

(Respondents 4 and 5 brought on record as legal heirs of the deceased 1st respondent viz., Ganesan vide Court order dated 01.10.2021 made in C.M.P.No.16263 of 2021 in C.R.P.(PD)No.1227 of 2017)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 15.02.2017 in I.A.No.1081 of 2016 in I.A.No.809 of 2015 in I.A.No.369 of 2015 in O.S.No.250 of 2015 on the file of I Additional District Munsif Court, Erode.

For Petitioners : Mr.S.Kaithamalai Kumaran

For R1 to R3 : Mr.C.Prabakaran

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the fair and decretal order dated 15.02.2017 in I.A.No.1081 of 2016 in I.A.No.809 of 2015 in I.A.No.369 of 2015 in O.S.No.250 of 2015 on the file of I Additional District Munsif Court, Erode.

2.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents 1 to 3 and perused the entire materials on record.

3.The petitioners are the defendants and respondents 1 to 3 are the plaintiffs in O.S.No.250 of 2015 on the file of I Additional District Munsif Court, Erode. Pending Civil Revision Petition, the 1st respondent died and his legal heirs were impleaded as respondents 4 and 5. The respondents 1 to 3 filed the said suit for declaration of their right of usage in the suit common lane and permanent injunction. In the said suit, the respondents 1 to 3 filed I.A.No.369 of 2015 for appointment of Advocate Commissioner. The Advocate Commissioner was appointed exparte. Hence, the petitioners filed I.A.No.809 of 2015 for appointment of Advocate Commissioner to re-visit the suit property. The said application was allowed. Again the petitioners filed present I.A.No.1081 of 2016 for appointment of Advocate Commissioner to re-visit the suit property, once again along with Taluk Surveyor to measure the suit

properties and to fix the 'F' line between the properties of the petitioners and the respondents, to note down the entire physical features in and around the suit properties and to file report along with plan.

4. According to the petitioners, the respondents 1 to 3 filed I.A.No.369 of 2015 for appointment of Advocate Commissioner to note down the physical features of the suit properties. The said application was ordered exparte, the Advocate Commissioner visited the property and filed report in the absence of the petitioners. The petitioners filed I.A.No.809 of 2015 for appointment of Advocate Commissioner to re-visit the suit property. The said application was ordered, Advocate Commissioner was appointed, he visited the suit property and filed report along with plan without any measurement. According to the petitioners, they have demolished the old building and are making arrangements to put up new construction. Taking advantage of the demolition of old building, the respondents are trying to grab the properties of the petitioners. Hence, it is necessary for appointment of Advocate

Commissioner to re-visit and measure the suit properties with the help of Taluk Surveyor as per the title deeds of both the petitioners and respondents and fix the boundary lines.

5.The respondents 1 to 3 filed counter affidavit and opposed the said application stating that the Advocate Commissioner was appointed in I.A.No.809 of 2015 filed by the petitioners, re-visited the suit property, filed report along with plan. The report of the Advocate Commissioner is on file. The present application filed by the petitioners is only to drag on the proceedings and prayed for dismissal of the said I.A.

6.The learned Judge considering the averments in the affidavit, counter affidavit and the stage at which the present I.A. was filed, dismissed the I.A.

7.Against the said fair and decretal order dated 15.02.2017 in I.A.No.1081 of 2016 in I.A.No.809 of 2015 in I.A.No.369 of 2015 in

O.S.No.250 of 2015, the petitioners have come out with the present Civil Revision Petition.

8.From the materials on record, it is seen that the respondents 1 to 3 filed suit for declaration and injunction claiming that the suit lane is a common pathway to reach their property. In the said suit, the respondents 1 to 3 filed I.A.No.369 of 2015 for appointment of Advocate Commissioner to note down the physical features of the suit property. The Advocate Commissioner was appointed exparte, he visited the suit property and filed his report with plan. The petitioners were not present at the time of inspection by the Advocate Commissioner. In view of the same, the petitioners filed I.A.No.809 of 2015 for appointment of Advocate Commissioner to re-visit the suit property on the ground that the Advocate Commissioner has inspected the property in their absence. The said I.A. was allowed, Advocate Commissioner appointed and inspected the suit property and filed report along with plan. The respondents and petitioners filed objections. While the learned Judge was

hearing the objections, the petitioners filed present I.A. for a direction to the Advocate Commissioner to re-visit the suit property and measure the properties of both the petitioners and respondents with the help of Taluk Surveyor along with title deeds of both the petitioners and respondents, in order to fix the boundaries, fix the 'F' line between the properties.

9.From the order of the learned Judge, it is seen that the petitioners earlier filed I.A.No.809 of 2015 for an appointment of Advocate Commissioner and for a direction to re-visit the suit property. They did not seek measurement of property with the help of Taluk Surveyor along with title deeds of the properties of the petitioners and respondents. Only when the learned Judge was hearing the objections filed by the parties, the petitioners filed the present I.A. The petitioners have not given any reason for not seeking measurement of properties, when they filed earlier I.A.No.809 of 2015. Further the report of the Advocate Commissioner is not final and it is only to assist the Court. It is for the learned Judge to consider the report of the Advocate Commissioner and the objections

filed by the parties to decide the issue in the suit. When the respondents have come out with the case that the suit lane is a common lane to reach their property, it is for them to prove their claim by acceptable oral and documentary evidence. The learned Judge considering the entire materials along with report of the Advocate Commissioner on two occasions and also failure on the petitioners to claim the present relief in the earlier application itself filed by them, dismissed the I.A. by giving cogent and valid reasons. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

10. For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

05.10.2021

Index : Yes/No

Internet: Yes/No

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V.M.VELUMANI,J.

Kj

To

I Additional District Munsif, Erode.



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