



C.R.P(PD). No.3265 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2021

CORAM

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

C.R.P(PD). No.3265 of 2019

and

C.M.P.No.22129 of 2019

1.Ruckmani
2.H.Jeyakumar

.. Petitioners

Vs

1.M.Jogharaj
2.K.N.Shanmugam
3.S.Manoj Kumar
4.S.Balasubramani
5.Vinu
6.Chitra
7.K.N.Bhojarajan
8.B.Sandhya
9.B.Sathia
10.Geetha
11.Samli
12.Sahana
13.Janakiammal
14.Halammal
15.Kannammal
16.K.B.Bhojan

.. Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and final orders passed in I.A.No.28 of 2018 in A.S.No.22 of 2017 dated 10.07.2019 on the file of the Subordinate Court, the Nilgiris, Uthagamandalam filed against O.S.No.98 of 2014 on the file of the District Munsif Court, Uthagamandalam.

For Petitioners : Mr.V.Ravi

For Respondents : No appearance



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ORDER

This Civil Revision Petition has been filed against the fair and final order passed in I.A.No.28 of 2018 in A.S.No.22 of 2017 dated 10.07.2019 on the file of the Subordinate Court, the Nilgiris, Uthagamandalam filed against O.S.No.98 of 2014 on the file of the District Munsif Court, Uthagamandalam.

2. The revision petitioners herein are the defendants 5 and 6 in O.S.No.98 of 2014 and appellants in A.S.No.22 of 2017 on the file of the Sub Judge, Nilgiris, Udhagamandalam District. Originally, the suit in O.S.No.98 of 2014 on the file of the District Munsif Court, Uthagamandalam was filed by the first respondent/plaintiff for the relief of mandatory injunction, more particularly, deleting the northern and southern boundaries and substituting with correct boundaries concerned with the sale deed dated 16.09.1998 registered as Doc.No.1184/1998 on the file of the Sub Registrar Office, Kotagiri. All the defendants contested the suit. The suit was decreed.

3. Aggrieved by the same, the defendants 5 and 6 have preferred an appeal in A.S.No.22 of 2017 and to defend their claim, they filed an application in I.A.No.28 of 2018 seeking to appoint a Court



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Commissioner to fix the land in Survey No.109/2B of Kookal Revenue Village and find out the physical features of the suit property. The said application was objected by the plaintiff. On hearing both sides, the First Appellate Judge had dismissed the said application. Aggrieved by the said order, the petitioners/defendants 5 & 6 have preferred this present revision.

4. The learned counsel appearing for the revision petitioners submitted that to rectify the boundaries of the property mentioned in the sale deed, the plaintiff filed a suit. However, the physical features was objected by the revision petitioners. Without considering their objection, the learned Trial Judge had decreed the suit. The learned counsel further submitted that the plaintiff has not taken any steps to prove the existence of the boundaries with the help of the Commissioner's report. Since the appeal was filed by the defendants 5 & 6, necessity arose for them to establish the existence of physical features. Hence, they have filed an application for appointment of Court Commissioner, but the learned Appellate Judge without considering the legal issue involved in the original suit, had erroneously dismissed the application. Hence, the learned counsel prayed to set aside the said order.



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5. Heard the learned counsel for the petitioners. There is no representation for the respondents.

6. The suit in O.S.No.98 of 2014 was filed by the plaintiff for mandatory injunction directing the defendants 1 to 16 to rectify the sale deed dated 16.09.1998 by deleting the northern and southern boundaries and to substitute with correct boundaries. The defendants 5 and 6 objected the said physical features. But no Court Commissioner was appointed during the trial proceedings. While decreeing the suit, the Trial Court without relying on any such document relating to the physical features, observed that the defendants have not raised any objection and based upon that, the suit was decreed. But the plaintiff, who approached the Court, has to prove their claim to correct the boundaries and the physical features of the suit property, and one such way is to establish it through the Commissioner's report. But the plaintiff has not taken any such steps. However, the contesting defendants 5 and 6 had taken steps to appoint a Court Commissioner. As per the submission made by the revision petitioners, the report of the Commissioner would enable the Court to enlighten the physical features more particularly, the boundaries existed on the suit property



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with the help of the surveyor report. To adjudicate the issues between the parties, the Commissioner's report is just and necessary, but without appreciating the legal aspects, the First Appellate Judge had erroneously dismissed the petition, which warrants interference.

7. Hence, the order passed by the learned Appellate Judge in I.A.No.28 of 2018 dated 10.07.2019 is set aside and the Civil Revision Petition is allowed. The Appellate Court is directed to proceed with the case and dispose of the appeal within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

01.11.2021

Internet : Yes/No
Index : Yes/No
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To

1.The Subordinate Judge,
The Nilgiris,
Uthagamandalam.

2.The District Munsif,
Uthagamandalam.



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T.V.THAMILSELVI, J.

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