

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.215 of 2017

and

C.M.P.No.916 of 2017

1.Vasudevan @ Vasu

2.Balasundaram @ Balachandar

.. Petitioners

Vs.

Dhanusu

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 30.08.2016 made in I.A.No.280 of 2014 in O.S.No.1584 of 2013 on the file of the Principal District Munsif, Puducherry.

For Petitioners : Ms.Elizabeth Ravi

For Respondent : Mr.R.Thiagrajan

ORDER

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

This Civil Revision Petition is filed against the fair and decretal order

dated 30.08.2016 made in I.A.No.280 of 2014 in O.S.No.1584 of 2013 on the file of the Principal District Munsif, Puducherry.

2.The petitioners are the plaintiffs in O.S.No.1584 of 2013 filed against the respondent / defendant for permanent injunction restraining the respondent, his men or agents from disturbing the peaceful possession and enjoyment of the suit property by them. The respondent filed written statement on 03.12.2013 and is contesting the suit. The petitioners filed I.A.No.280 of 2014 under Order XXVI Rule (9) R/W Section 151 of C.P.C., for appointing an advocate commissioner directing him to measure the suit property as per the documents of the parties, identify and mark the same with the assistance of a qualified Surveyor. According to the petitioners, the respondent and respondent's brother are owners of adjacent properties and the respondent's brother sold his property to the petitioners. Now the petitioners and respondent are adjacent owners. The petitioners are in possession and enjoyment of the suit property. The respondent in the written statement has stated that extent of the suit property mentioned in the plaint is not available on land in R.S.No.197/1 and there is a deficit in the total extent of the suit property. Therefore, there is a dispute with regard to extent of the suit property as per the documents and

availability of the land as on date. This can be decided only by appointment of advocate commissioner, who can measure the property and identify the property as per the records. The report of the advocate commissioner will avoid multiplicity of proceedings and prayed for appointment of advocate commissioner. The respondent filed counter affidavit and denied all the averments made by the petitioners. The respondent stated that the petitioners have stated in the plaint that the respondent and his brother objected for measuring of the property and suit property could not be identified. In view of the said submission, the suit for bare injunction is not maintainable. In the written statement itself the respondent has stated that there is a deficit in extent in the suit property. The petitioners have admitted in the suit notice as well as in the plaint that suit property could not be identified. The petitioners filed the present I.A. only to collect the evidence, which is not maintainable. The petitioners filed the present I.A. after 1 ½ years when the suit was posted for trial and prayed for dismissal of the I.A.

3.The learned Judge considering the averments in the affidavit, counter affidavit and judgments relied on by the learned counsel appearing for the petitioners and respondent, dismissed the I.A.

4. Against the said order of dismissal dated 30.08.2016 made in I.A.No.280 of 2014, the petitioners have come out with the present Civil Revision Petition.

5. The learned counsel appearing for the petitioners submitted that the learned Judge failed to see that there is no dispute with regard to title of the property. Admittedly the petitioners, the respondent and respondent's brother are beneficiaries under the will dated 11.09.1989 executed by the deceased L.Gopal Gounder. The learned Judge failed to see that title of the petitioners is admitted by the respondent himself. Once title is admitted, the land being vacant land, the principle that possession follows the title has to be applied. The learned Judge erroneously proceeded on the ground that petitioners are making attempt to collect the evidence and its failure to make a distinction between the identification of the property with reference to collection of evidence, there is no need or necessity whatsoever to collect any evidence, as both the parties are claiming as beneficiaries under the Will dated 11.09.1989. The respondent is entitled to 'A' Schedule property, whereas, the petitioners are entitled to 'B' Schedule property. The learned Judge failed to consider the case

of the petitioners and judgments relied on by the counsel and erroneously dismissed the I.A. and prayed for allowing the I.A. and also for allowing the Civil Revision Petition.

6.The learned counsel appearing for the respondent submitted that the learned Judge has considered all the materials placed before him in proper perspective and exercising his jurisdiction conferred on him, has dismissed the I.A by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court and prayed for dismissal of the Civil Revision Petition.

7.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the entire materials on record.

8.From the materials available on record, it is seen that it is the case of the petitioners that they are in possession and enjoyment of the suit property and respondent is now and then trying to interfere with their possession. On these averments and allegations, the petitioners filed suit in O.S.No.1584 of

2013 for permanent injunction restraining the respondent, his men or agents from interfering with the peaceful possession and enjoyment of the suit property by them. When the petitioners filed suit for permanent injunction restraining the respondent from interfering with their possession, it is for the petitioners to prove their possession of the suit property and interference of the respondent. In the present case, the respondent has taken a stand that extent of the property as marked in the document is not available and petitioners themselves have admitted that suit property is not identified. On these facts, it is for the petitioners to prove their possession and enjoyment by letting in acceptable oral and documentary evidence. In a suit for bare injunction, petitioners cannot seek for appointment of advocate commissioner to measure and identify the suit property. The learned Judge appreciating the above facts and judgments relied on by the learned counsel for the petitioners and respondent properly, dismissed the I.A. There is no error in the order of the learned Judge warranting interference by this Court.

9.In the result, this Civil Revision Petition stands dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

03.09.2021

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Index : Yes / No

Internet : Yes / No

To

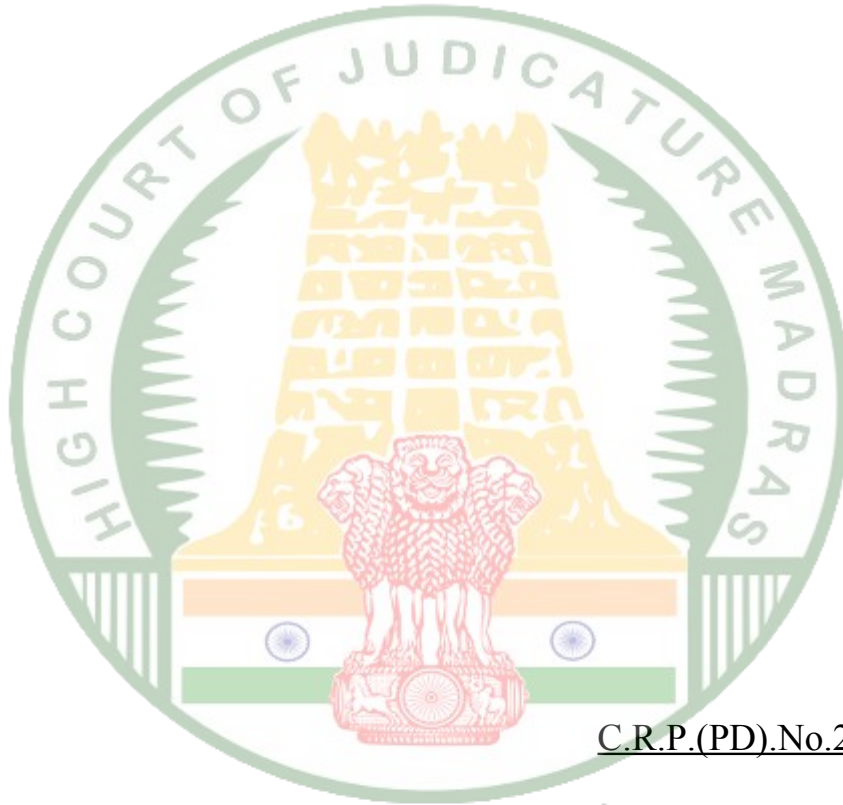
The Learned Principal District Munsif,
Puducherry.



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V.M.VELUMANI, J.

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