



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2021

CORAM

THE HONOURABLE **MRS.JUSTICE J.NISHA BANU**

C.R.P.(MD)No.118 of 2021

and C.M.P.(MD)No.800 of 2021

WEB COPY

Devaraj (late)

1.Radhabai

2.Senbagagurunathan

3.Lokesh Kannan

... Petitioners/Petitioners/Petitioners/
Plaintiffs

Vs.

1.Subbulakshmi

2.Jeyaprakash Narayanan

...Respondents/Respondents/Respondents/
Defendants

Prayer :Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records of the fair and decreetal order dated 20.01.2020 passed in I.A.No.2 of 2019 in I.A.No.154 of 2015 in O.S.No.83 of 2014 by the Principal District Munsif Court, Aruppukottai and set aside the same.

For Petitioners : Mr.T.Balaji

ORDER

This Civil Revision Petition has been filed to call for the records of the fair and decreetal order dated 20.01.2020 passed in I.A.No.2 of 2019 in I.A.No.154 of 2015 in O.S.No.83 of 2014 by the Principal District Munsif Court, Aruppukottai and set aside the same.

2.The learned counsel for the petitioners would submit that the petitioners herein are the plaintiffs in O.S.No.38 of 2014 on the file of the Principal District Munsif Court, Aruppukottai. The said suit was filed seeking for declaration declaring that the suit properties are belonged to petitioners/plaintiffs and consequently, permanent injunction against the respondents/defendants not to put up any further construction in the suit properties, in which, the respondents also filed their written statement stating that the defendants are the owners of the suit schedule properties. Be that as it may, the petitioners herein filed an Interlocutory Application in I.A.No.154 of 2015 for appointment of Advocate Commissioner and the same was allowed. After surveying the land, the Advocate Commissioner filed the final report along with sketch. According to the petitioners, there was no survey stone in the spot, hence, they made objection at the time of survey. But, the Advocate Commissioner without considering the objections, has filed the final report. Since the report did not show the petitioners' property and

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application in I.A.No.2 of 2019 to appoint another Advocate Commissioner along with District Surveyor to survey the suit properties and note down the physical features of the suit properties and file a report where the respondents filed their counter stating that there is no necessity to appoint another Advocate Commissioner. The trial Court after hearing both sides, dismissed the said application. Aggrieved over the same, the petitioners are before this Court.

3.Heard the learned counsel for the petitioners and perused the materials available on record.

4. Perusal of record shows that the suit is of the year 2014 and the Advocate Commissioner has filed the final report as early as in the year 2017. After a period of two years, the petitioners have come forward with the petition in I.A.No.2 of 2019 for re-issuance of the Advocate Commissioner Warrant stating that the earlier Advocate Commissioner has not surveyed the land in dispute properly. It is also seen that after filing of the Commissioner's report, the learned counsel for the petitioners as well as the respondents have made an endorsement as no objection for the commissioner report and hence, I.A.No.154 of 2015 was closed. If the petitioners are really aggrieved over the survey measurement, at that time of inspection itself, they ought to have filed objection for the Commissioner report, for which, there is no explanation given by the petitioners' side. Only within an intention to drag on the trial proceedings, I.A.No.2 of 2019 was filed where the learned Judge has rightly dismissed the application, therefore, I am not inclined to interfere with the order passed by the learned Principal District Munsif, Aruppukottai in I.A.No.2 of 2019 in I.A.No.154 of 2015 in O.S.No.83 of 2014.

5.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

msa

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Principal District Munsif,
Aruppukottai

2.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai (2C)

+1 CC to M/s.A.SRINIVASAN, Advocate (SR-3101[F] dated 03/02/2021)

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AP(23/02/2021) 3P 5C