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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date :03.03.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(NPD) (MD)No.1059 of 2019
and
CMP(MD).No.5772 of 2019

1.Manikam
2.Prakash

...Petitioners/Petitioners/Plaintiffs

Vs

Ravi

...Respondent/Respondent/Defendant

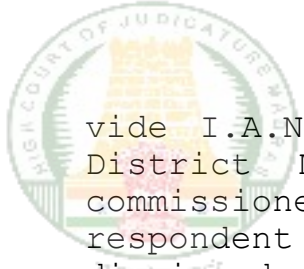
PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India to call for records pertaining to the order dated 22.03.2019 made in I.A.No.2 of 2019 in O.S.No.599 of 2014 on the file of the District Munsif Court, Lalgudi and set aside the same.

For Petitioners : Mr.T.Vadivelan
For respondent : Mr.A.Arumugam

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India to call for records pertaining to the order dated 22.03.2019 made in I.A.No.2 of 2019 in O.S.No.599 of 2014 on the file of the District Munsif Court, Lalgudi and set aside the same.

2. The petitioners would aver among other things that they instituted a suit in O.S.No.599 of 2014 for permanent injunction against the respondent herein on the file of the District Munsif Court, Lalgudi and obtained an order of interim injunction vide I.A.No.595 of 2014, on 27.11.2016, pending disposal of the suit. While so, it is alleged that the respondent herein had encroached upon certain portion of land belonging to the petitioners herein. To find out the encroached land, the petitioners moved an application



vide I.A.No.2 of 2019 in O.S.No.599 of 2014 on the file of the District Munsif Court, Lalgudi, for appointment of advocate commissioner with the aid of Surveyor, which was opposed by the respondent herein. The court below, after hearing both sides, had dismissed the application, which is impugned in the present Civil Revision Petition.

3. The learned counsel for the petitioner would contend that it is mandate on the part of the trial Court to appoint an advocate commissioner along with Surveyor to note down the physical features by taking into account the possession held by the petitioners herein. The impugned order is mechanically passed without applying the legal principles as held in the case of **Maruthai Nattar and others Vs Ayyavu and others**, reported in **(2018) 5 MLJ 447**.

4. *Per contra*, learned counsel for the respondent would contend that there is no justifiable reason adduced in support of seeking appointment of Advocate Commissioner on the strength of alleged possession claimed to be held by the petitioner. The attempt of the petitioners is nothing but to seek evidence through the appointment of Advocate Commissioner, which the petitioner is not entitled to legally and sought for dismissal of the application.

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

6. Admittedly, the present petition for appointment of an advocate commissioner was filed by the petitioners to measure the land in question on the basis of the possession held by them. The Court below had dismissed the application on the ground that the petitioners did not file any title or revenue document to sustain their claim. In the considered view of this Court, the Court below has rightly dismissed the application for appointing the Advocate Commissioner since the petitioners failed to produce any documents justifying his claim to measure the land in question. The learned counsel for the petitioners relied on the judgement cited supra, to say that an advocate commissioner is necessary to measure the land in question, wherein, he failed to note that in paragraph No.3 of the judgment cited supra, the petitioners therein derived their title through valid legal documents, therefore, this Court thought it fit to direct the Advocate Commissioner to measure the land in question therein. In the present case on hand, the learned Judge has dismissed the application finding that the petitioner does not possess any document under which he claims to measure the property and to conduct survey except to state that he seeks for the same based on possession. Taking note of the above aspects, the Court below had come to the conclusion that the petitioners are not entitled for the relief sought for and the interference of this Court is not necessary.

7. Accordingly, this Civil Revision Petition stands



dismissed. Consequently, connected miscellaneous petition is closed.
However, there will be no order as to costs.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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To

The District Munsif Judge,
Lalgudi

Copy to:-

The Section Officer,
V.R.Records,
Madurai Bench of Madras High Court.
Madurai.

CRP (NPD) (MD) No.1059 of 2019

DATED : 03.03.2021

MGJ(27.08.2021) 3P 4C