



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD)No.699 of 2019

and

C.M.P(MD) No.3911 of 2019

WEB COPY

1.Arumuga Pandaram
2.Saravanan

... Petitioners/Petitioners 1 & 2/
Appellants 1 & 2

Vs.

1.Murugesan
2.Loganathan

... 1st Respondent/Respondent/Respondent
... 2nd Respondent/3rd Petitioner /
3rd Appellant

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to allow the revision and set aside the fair and decretal order dated 27.02.2019 made in I.A.No549 of 2018 in A.S.No.04 of 2017 on the file of the Subordinate Judge, Thuraiyur.

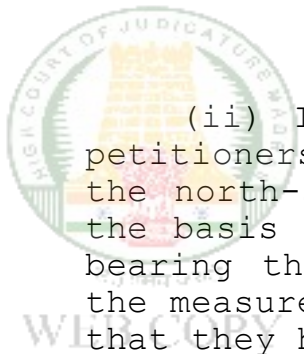
For Petitioners : Mr.PT.S.Narendravasan
For R-1 : Mr.V.Singan
For R-2 : No appearance

ORDER

The petitioners/appellants 1 and 2 have challenged the order passed in I.A.No.549 of 2018 in A.S.No.4 of 2017 by the Subordinate Judge, Thuraiyur. The said application has been filed by the petitioners for appointing an Advocate Commissioner to inspect the suit property with the help of the Surveyor and file his report.

2.The facts necessary to appreciate the grievance of the petitioners are herein below narrated:-

(i) the first respondent herein had filed a suit in O.S.No.146 of 2005 on the file of the learned District Munsif, Thuraiyur for a declaration and consequential injunction. The said suit was decreed on 20.12.2016. Challenging the said judgement and decree, the petitioners herein had filed A.S.No.4 of 2017 on the file of the Subordinate Court, Thuraiyur. Pending the appeal, the petitioners herein had come forward with the impugned application to appoint an Advocate Commissioner.



(ii) In the affidavit filed in support of the petition, the petitioners would contend that the plaintiff had claimed a right in the north-south pathway abutting the eastern wall of his house on the basis of a foot measurement, whereas in the parent document bearing the name of the grandmother Thailammai dated 22.05.2007 the measurement, is otherwise. The petitioners would further state that they have filed Ex.P1 FMB sketch to show the extent in their occupation. However, these factors have not been taken note by the trial court. In fact, the trial Court had not even considered the commissioner's report except for making a passing reference. Therefore, there was necessity to appoint an Advocate Commissioner.

(iii) The first respondent/plaintiff had filed a counter *inter alia* stating that the commissioner had been appointed in the trial Court and a detailed report and plan had been filed by the commissioner, which has also been marked as Ex.C1 and Ex.C2. The commissioner report had made note of the survey stones present on site and measurement had been taken from the said survey stones. Further without seeking to scrap the earlier report, the petitioners cannot claim to have a new commissioner appointment.

(iv) The learned Judge, on considering the rival submissions, had proceeded to dismiss the said petition taking into account the fact that the petitioners without seeking to scrap the earlier report, cannot have a new commissioner appointed. It is aggrieved by this order that the petitioners are before this Court.

3.Mr.P.T.S.Narendravasan, learned counsel appearing on behalf of the petitioners would submit that the trial Court has not even considered the report of the Advocate Commissioner and the report of the Advocate Commissioner is very vital to consider the issue on hand. Since the property had to be measured with the help of a surveyor, this would go a long way in assisting the Court to arrive at a fair decision. Therefore, the order passed by the learned Subordinate Judge, rejecting the petition, is baseless.

4.Heard the learned counsel for the petitioners and the learned counsel for the first respondent and perused the records.

5.The earlier Commissioner has inspected the suit property and measured the same with the help of surveyor. This report and plan have been exhibited as Ex.C1 and C2 in the suit. No objection had been filed for this report or plan. The only grievance now put forward is that the trial Court has not made any reference to the said report and plan. This cannot be a ground for appointing a new commissioner. That apart, the petitioners have not sought to have the earlier report scraped. Further, it is well open to the petitioners to refer the earlier commissioner report and plan marked as Ex.C1 and Ex.C2 before the Appellate Court. In the above circumstances, I do not find any reason to interfere with order



passed by the learned Subordinate Judge, Thuraiyur and accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 :-

The Subordinate Judge,
Thuraiyur.

C.R.P(PD) (MD)No.699 of 2019

01.12.2021

USK (29.12.2021) 3P 2C