



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.796 of 2020

and

C.M.P. (MD) No.5382 of 2020

WEB COPY

1.Sulthan
2.Abdul Nasser
3.Abubakkar

.. Petitioners/Petitioners/
Defendants

-vs-

Nagavalli

.. Respondent/Respondent/
Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 29.06.2020 made in I.A.No.201/2019 in O.S.No.39 of 2018 on the file of the District Munsif cum Judicial Magistrate, Thiruvadanai.

For Petitioners : Mr.PT.S.Narendravasan

ORDER

Aggrieved by the dismissal order dated 29.06.2020, passed in I.A.No.201 of 2019 in O.S.No.39 of 2018 by the learned District Munsif cum Judicial Magistrate, Thiruvadanai, seeking to appoint an Advocate Commissioner to note down the physical features of the suit property with the help of the Surveyor and submit a report, the petitioners/defendants are before this Court.

2.The brief facts are as follows.

2.1.The plaintiff/respondent herein had filed the suit in O.S.No.39 of 2018 for a bare injunction restraining the defendants/petitioners herein from interfering with the respondent's peaceful possession and enjoyment of the suit properties comprised in S.No.343/6E measuring 4 cents and S.No.343/6F measuring 13 cents of Oomaiudayanmadai Village, Ramanathapuram, situate within specified boundaries.

3.When the matter was listed for orders in I.A.No.237 of 2018, the petitioners herein had come forward with the impugned application seeking to appoint an Advocate Commissioner.

4.It is the case of the petitioners that the physical features of both S.Nos.343/6F and 343/6E are different and there is a chance of the plaintiff/respondent herein altering the physical features of the property. Therefore, there was a pressing need to appoint an Advocate Commissioner to note down the present conditions of the properties.



5.The said application was resisted by the respondent herein stating that it is nothing but an attempt to protract the proceedings, as the petitioners herein had filed several applications one for reopening the arguments in I.A.No.237 of 2018 and that apart, they have already instituted a suit in O.S.No.117 of 2017 in which, the respondent/plaintiff had sought for appointment of an Advocate Commissioner and a Commissioner had also been appointed and the Commissioner had noted down the physical features of the entire extent comprised in S.No.343, noted down the subdivisions and their respective measurement. Therefore, the respondent would submit that there was no requirement for another Advocate Commissioner and prayed for dismissal of the said application.

6.The learned District Munsif cum Judicial Magistrate, Thiruvadanai, after hearing the parties and perusing the records, proceeded to dismiss the said application. Aggrieved by the same, the defendants are before this Court.

7.Heard the learned counsel for the petitioners.

8.The suit is one for a bare injunction and as seen from the records, in a connected suit instituted by the petitioners herein, an Advocate Commissioner had been appointed and the Commissioner had noted down the physical features of the properties. This report can be marked in the instant proceedings. The present application for appointment of an Advocate Commissioner is to ascertain the present condition of the property so that the Court would be in a position to appreciate, if the property had been altered. The suit, being one for possession, parties had to only prove the possession of the property and nothing more.

9.In the above circumstances, the relief sought for is unwarranted particularly when, the same is already available in a connected matter. Therefore, the Civil Revision Petition is dismissed confirming the order dated 29.06.2020, passed by the learned District Munsif cum Judicial Magistrate, Thiruvadanai, in I.A.No.201 of 2019 in O.S.No.39 of 2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

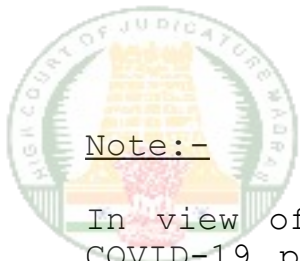
Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

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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 District Munsif cum Judicial Magistrate,
Thiruvadanai.

C.R.P. (PD) (MD) No.796 of 2020

Dated: 03.12.2021

MGJ(31.12.2021) 3P 2C