



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.2022 of 2021

and

C.M.P. (MD) No.10841 of 2021

WEB COPY

1.Krishnamoorthy
(Authorized Power Agent of Chinnammal)

2.Saraswathi .. Petitioners/Petitioners/
Defendants

-vs-

1.Karthick
2.Mariappan @ Arulkumar
3.Arumugam @ Anbu .. Respondents/Respondents/
Plaintiffs

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order passed in I.A.No.8 of 2021 in O.S.No.141 of 2018 on the file of the District Munsif Court, Palani, dated 09.09.2021.

For Petitioners : Mr.D.Venkatesh

ORDER

This Civil Revision Petition is filed by the defendants challenging the dismissal of their application in I.A.No.8 of 2021 in O.S.No.141 of 2018, dated 09.09.2021 seeking to appoint an Advocate Commissioner to note down the physical features of the suit property and the nature of construction put up thereon along with its measurement with the help of a Village Administrative Officer and the Taluk Chief Surveyor and to submit a report with plan.

2. The facts in brief are as follows:-

2.1. The respondents herein had filed the suit in O.S.No.141 of 2018 on the file of the District Munsif, Palani, for a permanent injunction restraining the defendants from interfering with the plaintiffs' possession on the suit property as well as their right to put up a fencing in the suit property and consequently for a mandatory injunction to restore the well in the suit property, which had been closed by the plaintiffs and for costs.



3. The case of the plaintiffs is that the defendants, who had purchased the property from one branch of Periyanna Gounder, had no right to purchase the same or resell it. However, they have purchased the adjacent property from another branch and formed a layout of house. In the process, they have entered into the suit property, closed the well that was existing thereon by filling it up with mud. The property of the defendants has been sold to several persons as house sites. Therefore, the plaintiffs have come forward with the above suit for a permanent injunction and a consequential mandatory injunction.

4. The 1st defendant had filed a detailed written statement refuting the contentions of the plaintiffs. The written statement filed by the 1st defendant was adopted by the 2nd defendant. Pending the suit, an application in I.A.No.773 of 2018 was filed by the plaintiffs to appoint an Advocate Commissioner to note down the physical features of the suit property and to submit a report. The Commissioner had, accordingly, visited the property and submitted his report together with a survey map. The defendants have also filed their objection to the said report. Thereafter, the petitioners/defendants have moved yet another application in I.A.No.8 of 2021 for appointing an Advocate Commissioner to note down the physical features, the construction put up and its nature with the help of a Village Administrative Officer and the Taluk Chief Surveyor. The prayer appears to be identical to the prayer in the earlier application in I.A.No.773 of 2018.

5. In the affidavit filed in support of the impugned application, the defendants would submit that the earlier Advocate Commissioner had used the old FMB plan of the Revenue Department and therefore, a report, totally against the defendants, had been filed. Therefore, there was a necessity to identify the construction put up by the subsequent purchasers, after obtaining necessary plan sanction from the Kodhaimangalam Panchyat on 31.08.2005. The petitioners/defendants would submit that it was necessary to note down these changes.

6. The respondents/plaintiffs had filed a counter stating that there is an earlier Commissioner's report setting forth all these details and the petitioners/defendants have not sought to have that report scrapped before asking for the appointment of a fresh Commissioner. They, therefore, sought for the dismissal of the said application.

7. The learned District Munsif, Palani, by his order dated 09.09.2021, was pleased to dismiss the application. The learned



Judge held that there was an earlier report in I.A.No.773 of 2018 and the petitioners have not asked for the scrapping of this report and therefore, the present application was not maintainable.

WEB COPY

8. Heard the learned counsel for the petitioners and perused the records.

9. In I.A.No.773 of 2018, the plaintiffs had filed an application for appointing an Advocate Commissioner, in which the very same scope of work as sought for in the impugned application has been asked. The Advocate Commissioner has visited the suit property with the help of the Surveyor, noted down the physical features and submitted a detailed report. The petitioners have submitted their objection to the said report. While so, without seeking to scrap the report already submitted, the petitioners have come forward with the application to appoint a fresh Advocate Commissioner to do the same work as entrusted to the earlier Advocate Commissioner. This application has been rightly rejected by the learned District Munsif, Palani, and I do not find any ground for interfering with the order dated 09.09.2021 and the same is confirmed. It is well open to the petitioners to examine the Advocate Commissioner as a witness to elicit the true facts regarding the lie of the land.

10. In the result, this Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

abr

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, Palani.

WEB COPY

C.R.P.(PD) (MD) No.2022 of 2021

Dated: 16.12.2021

RK(30/12/2021) 4P 2C