



C. R.P.No.(PD).371 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD).No.371 of 2022

and

C.M.P.No.1926 of 2022

A.S.Thirunavukkarasu

...Petitioner/Petitioner/Plaintiff

-V-

1.A.A.Kuppusami

2.A.S.Sundaram

3.A.S.Ulaganadhan

...Respondents/Petitioners 1,3&4
/Plaintiffs 1, 3 & 4

4.S.Saravanan

5.R.G. Ramachandran

...Respondents/Respondents
/Defendants

Prayer: Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 29.09.2021 passed in I.A.No.1 of 2021 on the file of the learned District Munsif -cum- Judicial Magistrate, Palliapattu.



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For Petitioner : Mr.R. Karunakaran

ORDER

The plaintiffs in a suit for bare injunction is the petitioners before this Court challenging the dismissal of their application for appointing an Inspector of Survey of Thiruvallur with a direction to measure the properties and to note down the physical features.

2.The petitioners had filed the suit O.S.No.132 of 2011 for a bare injunction. The plaintiffs' contention in the Plaint is that the suit property had been jointly purchased by the father of the plaintiffs 2 to 4 and the 1st plaintiff who is a cousin of the plaintiffs 2 to 4 from the original owners under a registered Sale Deed dated 09.08.1990 and patta has been mutated in their name. The father of the plaintiffs 2 to 4 had died leaving behind them to succeed to his estate. The defendants who had the lands on the Western side of the suit property



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were trying to encroach into the properties. Therefore, the plaintiffs had come forward with the suit.

3.A Written Statement was filed denying the claim of the plaintiffs and also contending that the plaintiffs had attempted to encroach into the defendants' land for which a suit O.S.No.31 of 2012 has also been filed on the file of the learned District Munsif -cum- Judicial Magistrate, Palliapattu. They would contend that the suit property has not been encroached upon by them and the construction activity is only carried out in their lands.

4.It appears that an Advocate Commissioner has also been appointed in I.A.No.372 of 2016 who had inspected the suit premises measured the same with the help of the Surveyor and fixed the boundaries of S.No.318/6 and S.No.318/8 which are the suit schedule properties and the report was accompanied by his Plan and Sketch where respondents' house portion is shown as situated in



S.No.318/7B. The Commissioner had reported that the construction is only in S.No.318/7B. Objections have been filed to the said report.

The impugned application has been filed when the cross examination of PW1 was underway. The only ground on which the petition has been filed is narrated in Paras 2 and 3 of the affidavit filed in support of the petition which reads as follows:

“(2)...I submit that the land in S.No.318/7 to an extent of 0.22 Hrs. is situated adjacent to western side of suit properties and the respondents are the owners of the land in the said Survey Number. Taking advantage of the same, the 1st respondent had encroached and constructed house in the suit properties inspite of out objections. So in order to avoid much oral evidence with regard to the encroachments made by the respondents we had already filed a petition to appoint Taluk Head Surveyor to measure the suit land and to fix boundaries. Accordingly, the Taluk Head Surveyor



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had measured the suit properties and filed his report.

(3)I humbly submit that the Surveyor did not measure the suit lands property and the report filed by him is not a correct one. We also filed objections with regard to the Commissioner's report....”

5.It is seen that the plaintiffs have early filed an application for appointment of an Advocate Commissioner which has also been allowed and the report of the Advocate Commissioner is on file. A reading of the report would indicate that the measurement has been done with the help of the Surveyor who has fixed boundaries of S.F.Nos.318/6 and 318/8. Since the petitions have been filed and the suit is one for bare injunction the Court below has rightly dismissed the application holding that it is open to the petitioners to examine the Advocate Commissioner with reference to his report. I do not find any reason to interfere with the said order.



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WEB COPY Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

17.02.2022

Internet : Yes/No
Index :Yes/No
Speaking / Non-Speaking
mps

To

The District Munsif -cum- Judicial Magistrate,
Palliapattu.



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P.T. ASHA, J,

mps

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