



C.R.P (PD) No.2868 of 2015

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

C.R.P (PD) No.2868 of 2015

& M.P.No.1 of 2015

(Through Video Conference)

1. K.Rajendiran

2. R.Mohan

...Petitioners/Defendants 1 & 2

Vs.

1. R.Parthasarathy

2. A.S.Udayasankar

3. V.Kumar

... Respondents/Plaintiffs

4. Siva

5. Vedhavalli

6. Umapathy

7. Elumalai

8. Pitchandi



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9. Yuvaraj

10. Balaji

... Respondents / Defendants 3 to 9

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the decretal order, dated 20.02.2015 in I.A.No.63 of 2014 in O.S.No.22 of 2008 on the file of II Additional District and Sessions Judge, Vellore at Ranipet.

For Petitioners : Mr.G.Rajan

For Respondents : No appearance

ORDER

Aggrieved against the dismissal of I.A.No.63 of 2014 in O.S.No.22 of 2008, dated 20.02.2015 by the learned II Additional District and Sessions Judge, Vellore at Ranipet filed under Order 26 Rule IX of Civil Procedure Code to appoint an Advocate Commissioner to inspect the suit properties and to note down the physical features along with the Taluk Surveyor and photographer to file a report, the petitioners/ defendants 1 and 2 have filed the present Civil Revision Petition, seeking to set aside the aforesaid order of dismissal.



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2. The brief facts of the case are as under:-

The respondents 1 to 3 / plaintiffs filed the suit in O.S.No.22 of 2008 for specific performance, based on the sale agreement dated 04.04.2007 against the petitioners/defendants, wherein the other respondents are purchasers of the suit lands. It is alleged that the respondents 1 to 3 have not performed the Contract. It is an admitted fact that the suit properties were converted into house sites and even before filing the suit, the house sites were purchased by several persons and it is also an admitted case that Pukka houses were constructed in the suit properties, thereby converting the lands to house sites and service connections have also been given to the houses by way of installation of electric polls.

3. Admittedly, the site is not in the form of agricultural lands as stated in the plaint and even as per the plaint averment, the possession of the property was handed over to the plaintiffs and thereafter, it has been converted into house sites. As per the written statement filed by the defendants 1 and 2, delivery of possession to the plaintiffs was denied. As per the plaint, the defendants 3 to 9



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alleged to have purchased the plots out of the scheduled mentioned properties from defendants 1 and 2, which was denied by the plaintiffs.

4. The learned Judge has elaborately discussed about the nature of the site and the contentions raised by the plaintiffs and the defendants and has stated that the allegations as to the construction of electric polls and other things, which is alleged to have been done after filing of the suit, can be decided only in the main suit after elaborate trial and now, since the trial has already commenced in the year 2009 itself and after examination of the plaintiff's side witnesses and after the commencement of examination of the defendant's side witnesses, the present application has been filed, when the case was posted for further evidence of the defendants. Therefore, finding much force in the contentions made by the respondents that the application in I.A.No.63 of 2014 has been filed only to drag on the proceedings and has rightly observed that appointment of an Advocate Commissioner to inspect the property, at this stage, is only to protract the proceedings of the suit and the learned Judge had dismissed the application.



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5. The learned Judge had also found that there is no necessity for measuring the property by a Surveyor, as there is no dispute with regard to the measurement or boundaries. This Court does not find any infirmity in the order passed by the learned II Additional District and Sessions Judge, Vellore at Ranipet, thereby confirming the dismissal of I.A.No.63 of 2014 in O.S.No.22 of 2008, this **Civil Revision Petition stands Dismissed**. No costs. Consequently, connected miscellaneous petition stands closed.

14.03.2022

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Index : Yes/No
Internet : Yes/No

To:

The II Additional District and Sessions Judge,
Vellore, Ranipet.



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J.NISHA BANU, J.,

sts

Order made in
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