



C.R.P.(NPD) No.1372 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) No.1372 of 2019
and C.M.P. No.8984 of 2019

1. Ponnusamy
2. Pavayee

.. Petitioners

Vs.

S.Mariammal

.. Respondent

Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order dated 22.01.2019 and amended on 13.03.2019 made in R.E.A. No.36 of 2018 in R.E.A. No.21 of 2017 in R.E.P. No.460 of 2012 in O.S. No.771 of 2001 on the file of II Additional District Munsif, Salem and allow the Civil Revision Petition.

For Petitioners : Mr. S.Sureshkumar

For Respondent : Mr. J.Hariharan
for Mr. V.Nicholas



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ORDER

Aggrieved by the order in R.E.A. No.36 of 2018 in R.E.A. No.21 of 2017 in R.E.P. No.460 of 2012 in O.S. No.771 of 2001, the revision petitioners who are the defendants in the suit O.S. No.771 of 2001, preferred the above Civil Revision Petition.

2. Brief facts that are necessary for the disposal of the Civil Revision Petition are as follows:

The respondents in this Civil Revision Petition as plaintiffs filed a suit in O.S. No.771 of 2001 before the District Munsif Court, Salem, for permanent injunction restraining the defendants namely the revision petitioners herein from demolishing the compound wall and remove the gate put up in the suit property by the plaintiff. It is not in dispute that the suit in O.S. No.771 of 2001 was decreed by the learned District Munsif, Salem. It is an *ex parte* decree for permanent injunction. After the *ex parte* decree in O.S. No.771 of 2001, the respondent herein filed R.E.P. No.460 of 2012 in O.S. No.771 of 2001 under Order 21 Rule 32 of C.P.C. alleging that the revision petitioners have wilfully



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disobeyed the decree for injunction. At the instance of the respondent herein, an advocate commissioner was appointed to inspect the property and file a report. It is to be noted that the said application was for appointment of Advocate Commissioner to inspect the suit schedule property and the respondent's house and to measure the same with the help of Taluk Surveyors and to note down the physical features, the location of the newly built terrace building on the eastern side of 11 feet lane. The said application was allowed. After the application for appointment of Advocate Commissioner was allowed the Commissioner also filed a report.

3. After the first Commissioner's report, the revision petitioners filed an application before the lower Court in R.E.A. No.36 of 2018 to pass an order directing the Advocate Commissioner to measure the newly constructed building as per the sale deed dated 16.11.1989, in favour of the petitioners. This application was filed so that the Advocate Commissioner may also measure the property of petitioners as per the sale deed. However, the lower Court dismissed the application mainly on the ground that the petitioners have come forward with an application only to measure the property as per the sale deed and that such application is not maintainable in view of the scope of the execution



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proceedings. Further, the lower Court has also observed that the petitioners have encroached a portion of the property where there was building and later demolished.

4. This Court is unable to sustain the view taken by the lower Court. The dispute is also regarding identity of property which is the subject matter. It is to be noted that the decree obtained by the respondent in this Civil Revision Petition is an *ex parte* decree. Admittedly, the petitioners have claimed right to the property on the basis of the sale deed. The purpose of the appointment of Advocate Commissioner is to obtain evidence which will be necessary for an effective adjudication of all issues. The application filed by the petitioners was to invite the Commissioner to inspect and measure the property as per the title document of the petitioners. No prejudice is caused to the respondent by appointing an Advocate Commissioner to note down the physical features and measurements according to the sale deed marked by the revision petitioners. The question regarding encroachment can also be identified with reference to document of title so that appropriate orders can be passed regarding wilful disobedience. In that view of the matter, this Court is able to see that the order of the lower Court without considering all issues that may arise for



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consideration, is unsustainable.

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5. Having regard to the facts and circumstances of the case, it is not necessary in this case that the same Advocate Commissioner has to visit the property. The Court may also appoint any other Advocate Commissioner. Hence, the Civil Revision Petition is disposed of with a direction to the lower Court to appoint the same or a new Advocate Commissioner to inspect the property and to identify the property with reference to the petitioner's title deed. The lower Court may dispose of R.E.P. No.460 of 2012 in O.S. No.771 of 2001 uninfluenced by any of the observations made in this order. No costs. Consequently, connected miscellaneous petition is closed.

11.01.2022

Speaking order / Non-speaking order

Index: Yes / No

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To

The II Additional District Munsif, Salem.



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S.S.SUNDAR, J.,

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