



C.R.P. No.1906 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.1906 of 2019
and
C.M.P.No.12552 of 2019

1. Krishnan @ Krishnamurthy
 2. Palaniammal,
W/o. Krishnan @ Krishnamurthy
 3. Nagaraj,
S/o. Krishnan @ Krishnamurthy
- ... Petitioners

Vs.

Pappathi,
W/o. Antonimuthu

... Respondent

PRAYER: Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 07.12.2018 made in I.A.No.418 of 2015 in O.S. No. 2081 of 2009 on the file of 2nd Addl. District Munsif Court, Coimbatore.

For Petitioners	: Mr.K.Selvakumar
For Respondent	: Mr.B.Neduncheziyan



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ORDER

Challenging the impugned order passed in I.A.No. 418 of 2015 in O.S.No.2081 of 2009 on the file of II Addl. District Munsif, Coimbatore, the defendants preferred this Civil Revision Petition.

2. Originally, the suit in O.S.No. 2081 of 2009 was filed by the plaintiff for the relief of permanent injunction and also direct the defendants to remove the unauthorised construction put up in the property by way of mandatory injunction. He claimed right over the property as listed in the plaint schedule as plot No.56 allotted by the Tamil Nadu Slum Clearance Board and also contended that in that plot No.56, the defendants encroached and accordingly, he prayed to remove the encroachment. The defendants denied the plaintiff's title by filing written statement and also contended that from the year 1979 till filing of the suit, they are in possession and enjoyment of the property and they have put up construction. Therefore, they totally denied the plaintiff's right claiming over the property. During



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the pendency of proceedings, the plaintiff filed an application in I.A.No. 418 of 2015 under Order 26 Rule 9 and Sec.151 of C.P.C. praying to appoint advocate commissioner and to measure the property in order to prove the encroachment made by the defendants. The said application was strongly objected by the defendants stating that the plaintiff has not properly described the suit property. Moreover, their father has put up a construction in 900 sq.ft. and the same was enjoyed by the defendants. So, the plaintiff has no right to measure the property. Considering both side submissions, the trial court allowed the application by appointing a commissioner to measure the property along with Surveyor. Challenging the said findings, the defendants preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners argued that the trial court failed to take note of the fact that without giving proper description of property, they prayed the court to appoint an advocate commissioner and to measure the property, as such, is not maintainable. But, the trial court failed to appreciate the above said facts. Hence, he prayed to set aside the findings of the trial judge.



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4. By way of reply, the learned counsel for respondent/plaintiff submitted that as per the order passed by the trial court, the Commissioner was appointed and he measured the property and submitted a report along with Surveyor report. Now, the trial was also commenced.

5. On considering the relief claimed in the plaint, the plaintiff is entitled to remove the alleged encroachment through the commissioner's report. Though the commissioner report is not conclusive one, the report of commissioner could minimise the work of the courts. Furthermore, the warrant was also communicated and report was filed before the court. If at all, the defendants have any objections, they are entitled to raise objections to the Commissioner's report before the trial court and the trial court is directed to proceed with the trial and dispose the case within a period of six months from the date of receipt of copy of this order, since the suit is pending from the year of 2009 onwards. Furthermore, the commissioner was already appointed by the trial court and the Commissioner not visited the property, if at all, not visited the property, he is directed to visit the property



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and submit the report. Liberty is granted to the parties to submit their respective objections before the trial court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

02.12.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

II Addl. District Munsif,
Coimbatore.



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T.V.THAMILSELVI, J.

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