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CRP.Nos.4208&4209 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.Nos.4208 & 4209 of 2017
and
C.M.P. Nos. 19735 & 193736 of 2017

1. Natarajan,
2. Santha

.. Petitioners
(In both Petitions)

Versus

Vadivel

.. Respondent
(In both Petitions)

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 09.12.2016 passed in I.A. No.969 of 2014 and dated 19.06.2017 passed in I.A. No.970 of 2014 in O.S. No.15/2014 on the file of the District Munsif Court, Dharmapuri.

For Petitioners : Mr. V.G. Suresh Kumar

For Respondent : Mr. V.R. Anna Gandhi
(In Both petitions)



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COMMON ORDER

These Civil Revision Petition have been filed seeking to set aside the fair and decreetal order dated 09.12.2016 passed in I.A. No.969 of 2014 and dated 19.06.2017 passed in I.A. No.970 of 2014 in O.S. No.15/2014 on the file of the District Munsif Court, Dharmapuri.

2. The petitioners herein are the plaintiffs and the respondents herein are the respondents in the Original Suit.

3. The case of the petitioners is that the petitioners have filed O.S.No.15 of 2014 against the defendant before the Trial Court seeking for a relief of declaration of title of 11/2 feet on the suit land and permanent injunction against the defendant. Pending the aforesaid suit, the petitioner filed the application in I.A. No.969 of 2014 seeking for to amend the plaint and I.A. No.970 of 2014 seeking for appointment of Advocate Commissioner to measure the suit property with the help of the Surveyor which comprised in S.No.452/1B belonged to the plaintiffs/petitioners herein and in S.No.452/2A belonged to the defendant/respondent herein.



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Having perused the oral and documentary evidence and hearing both sides, the Trial Court dismissed both applications in I.A. Nos.969 and 970 of 2014 by order dated 09.12.2016 and 18.06.2017 respectively. Being aggrieved by the aforesaid orders passed by the Trial Court, the plaintiffs have filed the present Civil Revisions Petitions to set aside the same.

4. The learned counsel for the petitioners would submit that while the respondent has right over only 22 cents in S.No.452/2A as per the Partition Deed dated 15.02.1971, the Revenue authority has issued patta for an extent of 24.2 cents by including the petitioners' property also. In fact, the extra 2.2 cents has to be included in S.No.451/1B of the plaintiffs/petitioners herein. Hence, the plaintiffs have filed the applications to amend the plaint to that effect and to appoint an advocate commissioner to measure the suit property in S.Nos.451/1B and 452/2A enabling the Trial Court to come to the conclusion whether the land comprised in the property of the petitioner or the respondent. However, without appreciating the aforesaid facts and circumstances of the case, the Trial Court has dismissed both the applications mechanically which is perverse and liable to be set aside.



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5. The learned counsel for the respondent would submit that the the respondent has already filed O.S. No.67 of 1992 before the District Munsiff Court, Dharmapuri seeking for declaration of the suit property. As per the order dated 12.02.1992 of the Trial Court, the Advocate Commissioner has already inspected the suit property and submitted his report before the Trial Court. Perusing the report of Advocate Commissioner and considering the facts and circumstances of the case, the Trial Court has passed the Judgment and decree dated 30.09.2004 in the said suit in favour of the plaintiff/respondent herein as prayed for. In the appeal preferred by the defendants/petitioners herein in A.S. No.8 of 2005, the First Appellate Court confirmed the findings of the Trial Court by Judgment dated 10.12.2009. Thereafter, the defendant/petitioner herein has filed S.A. No.537 of 2013 before this Court. Pending the aforesaid appeal, the decree passed by the Trial Court has been executed and delivery receipt is also obtained on 10.07.2014. This Court after perusing the oral and documentary evidence and hearing both sides dismissed the same by Judgment dated 31.01.2022 having observed the aforesaid reasons. Even after the second appeal is dismissed filed by the petitioners herein for the same cause of action, the second round of litigation is going



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on to lay the way for the multiplicity proceedings. Having considered the aforesaid facts, the Trial Court has rightly dismissed the aforesaid applications filed by the plaintiffs/petitioners herein.

6. Heard, the learned counsel for the petitioners and the respondent as well as perused the materials available on record.

7. Having considered the facts and circumstances of the case and perused the oral and documentary evidence, it makes clear that in the earlier suit proceedings in O.S. No.67 of 1992 filed by the respondent herein praying for the declaration of title in the suit property with regard to S.No.425/2A, an Advocate Commissioner after inspecting the suit property, filed his report. Based on his report, the aforesaid suit is decreed in favour of the respondent herein. In the first appeal in A.S. No.8 of 2005 filed by the petitioners herein, the Judgment of the Trial Court was confirmed. Thereafter, S.A.No.537 of 2010 filed by the respondents is dismissed by Judgment dated 31.01.2022 of this Court. While it came to know that there is no appeal filed against the aforesaid order passed by this Court, it became finality. Under such circumstances, this Court is not



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inclined to interfere with the order dated 09.12.2016 passed in I.A. No.969 of 2014 and dated 19.06.2017 passed in I.A. No.970 of 2014 passed by the Trial Court. However the liberty is given to the plaintiffs to mark the report of Advocate Commissioner submitted by the earlier Advocate Commissioner in the suit filed by the plaintiffs/petitioners herein.

8. In the result, these Civil Revision Petitions are dismissed. Consequently, connected miscellaneous petitions are closed if any. No costs.

26.10.2022

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Index : Yes/No

Speaking Order : Yes/No



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1. The District Munsif Court, Dharmapuri.
2. The Section Officer, V.R.Section
High Court, Madras.



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T.V.THAMILSELVI, J.

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