



WEB COPY



CRP (MD) Nos.1896 and 1897 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 10.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

**CRP (MD) Nos.1896 and 1897 of 2022 and
CMP (MD) Nos.8534 and 8535 of 2022**

Raja ... Petitioner
in CRP (MD) No.1896 of 2022

Jeyam ... Petitioner
in CRP (MD) No.1897 of 2022

Vs

Kalimuthu ... Respondents
in both petitions

COMMON PRAYER: Civil Revision Petitions are filed under Section 115 of CPC, to set aside the decree and judgment passed by the District Munsif Court, Andipatti in EA.No.11 of 2022 in EA.No.7 of 2021 against EP.No.14 of 2019 in OS.No.62 of 2005 and EA.No.11 of 2022 in EA.No.7 of 2021 against EP.No.10 of 2019 in OS.No.58 of 2005 dated 04.07.2022.

For Petitioner :Mr.V.Sriram

For Respondent :Mr.M.Saravanan

COMMON ORDER

These civil revision petitions are filed challenging the decree and judgment passed by the District Munsif Court, Andipatti in EA.No.11 of 2022 in EA.No.7 of 2021



CRP (MD) Nos.1896 and 1897 of 2022

against EP.No.14 of 2019 in OS.No.62 of 2005 and EA.No.11 of 2022 in EA.No.7 of 2021 against EP.No.10 of 2019 in OS.No.58 of 2005 dated 04.07.2022 respectively.

2.The respondent / plaintiff has filed the suits in OS.No.62 of 2005 and 58 of 2005 before the District Munsif, Andipatti for mandatory injunction and recovery of possession with regard to the suit schedule property in survey No.1377/2B5 to an extent of 29 Ars. The suits were decreed. The petitioners/ defendants have filed appeals and the appeals were dismissed. Thereafter, the respondent/ plaintiff has initiated execution proceedings in EP.Nos.14 and 10 of 2019. Delivery was ordered and effected on 21.12.2020. Thereafter, the petitioners filed an application in EA.Nos.7 of 2021 under Section 47 of CPC alleging that delivery was effected over and above the decree mentioned property, wherein an application in EA.No.10 of 2021 was filed for appointment of advocate commissioner. The said application was allowed, advocate commissioner was appointed and he has also filed his report on 23.04.2022. However, the petitioners raised certain objections to the report of the advocate commissioner on 28.04.2022 that the



CRP (MD) Nos.1896 and 1897 of 2022

advocate commissioner has not noted down the delivered suit schedule property properly. The execution court rejected the application filed in EA.Nos.7 of 2021. Again the petitioner has filed an application in EA.Nos.11 of 2022 for re-issuance of warrant to the same advocate commissioner. The said applications were dismissed by fair and decreetal order dated 04.07.2022. Challenging the same, the present civil revision petitions are filed.

3.The learned Counsel for the petitioners submits that the advocate commissioner has not properly measured the suit property and he measured the present property, which is in possession of the petitioners. The petitioners were having electricity connections in their property and during the pendency of the execution proceedings, it was disconnected. Their existence was not noted down by the advocate commissioner. The purpose of appointment of the advocate commissioner is only to measure the suit schedule property and the extent of the property, now the petitioners posses. However, the advocate commissioner filed his report without noting down the disconnection of the electricity connection and has not noted down whether



CRP (MD) Nos.1896 and 1897 of 2022

it was in the suit property or it was in the property, which is in possession of the petitioners. Therefore, the issue can be decided only after ascertaining the above facts by the advocate commissioner.

4.The learned Counsel for the respondent submits that the Court has directed the advocate commissioner to measure the property with the help of the surveyor and to file his report. The advocate measured the property with the help of the surveyor and filed his report that a portion of the suit property is encroached by the petitioner.

5.This Court heard the learned Counsel on either side and perused the materials placed on record.

6.Though the advocate commissioner was appointed and he has filed his report, the petitioners have grievance that the advocate commissioner has not measured the property properly as directed by the Court and in order to ascertain the present status, the advocate commissioner has to be appointed. Therefore, in order to ascertain the above facts, these civil revision petitions are allowed on



CRP (MD) Nos. 1896 and 1897 of 2022

condition that each petitioner shall pay a sum of Rs.10,000/-[Rupees Ten Thousand] to the respondent within a period of two weeks from the date of receipt of a copy of this order. On filing of proof of cost, the trial Court shall re-issue warrant to the advocate commissioner with a direction to ascertain the extent of the suit property and to find out whether any electricity connection was existing in the suit schedule property or in the property, which is now in possession of the petitioner and to file a report before the trial Court and the trial Court shall consider the same along with the earlier report of the advocate commissioner and decide the issue afresh.

7. Accordingly, these civil revisions petitions are allowed. Consequently connected miscellaneous petitions stand closed.

10.11.2022

dsk

To

The District Munsif,
Andipatti.



WEB COPY



CRP (MD) Nos.1896 and 1897 of 2022

B.PUGALENDHI, J.

dsk

CRP (MD) Nos.1896 and 1897 of 2022

10.11.2022