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C.R.P.No.1351 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2023

CORAM:

THE HON'BLE Mrs.JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.No.1351 of 2021

C.M.P.No.10452 of 2021

Ramasmy Gowder (deceased)

1. J.Rathinamani

2. M.Bagiyamani

[Cause title accepted vide court
order dated 14.06.2021 made in
C.M.P.No.8672 of 2021 in C.R.P.
Sr36981 of 2021]

...Petitioners

Vs.

1. N.Marimuthu

2. N.Selvaraj

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 05.02.2021 passed in I.A.No.748 of 2007 in O.S.No.315 of 2007 on the file of the learned District Munsif, Mettupalayam by allowing the Revision.

For Petitioners : Mr.P.Veeraraghavan

For Respondents : Served – Name printed – No appearance
Mr.C.K.Nataraj (Lower court counsel)
No appearance

ORDER

The present Civil Revision Petition has been filed to set aside the



C.R.P.No.1351 of 2021

order dated 05.02.2021 passed in I.A.No.748 of 2007 in O.S.No.315 of 2007 on the file of the learned District Munsif, Mettupalayam by allowing the Revision.

2. The brief facts of the case in nutshell are as follows:-

The petitioners are the defendants and the respondents are the plaintiffs in O.S.No.315 of 2007, which was filed for demarcation of the suit property, as per the title deeds of the parties with reference to the metes and bounds by appointing a Commissioner and fix the southern boundary of the suit schedule property. Further, written statement was also filed by the petitioners / defendants. In the meantime, the respondents / plaintiffs filed I.A.No.748 of 2007 to appoint of an advocate commissioner to measure the petition mentioned property with the assistance of a qualified surveyor for demarcation and fixation of the boundary lines, as per the title deeds and to file his report with plan and by taking into consideration of the averments on both sides, the court below has passed an order by appointing an advocate commissioner. As against the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioners would submit that the suit prayer itself was granted by way of an interim order. Further, the court



C.R.P.No.1351 of 2021

below ought to have noticed that the petitioners / defendants had claimed that they are in possession of an extent of 1.60 acres in S.F.No.948 on the southern side of the property and the said property formed part and parcel of S.F.No.947/2 situated at Irumbarai village, mettupalayam taluk. In fact, S.F.Nos.947/2 and 948/2B have been demarcated long back and demarcation stone has been affixed by the revenue authorities in between the property of the petitioners / defendants in the said S.F.No.948/2B. Further, the demarcation of the property, at this juncture, will create lot of disturbances and commotion to the petitioners / defendants obviously.

4. The learned counsel for the petitioners also submits that it is not a simple case of measurement and demarcation of the suit property as per the schedule, but it is clever mode of collecting evidence in favour of the respondents / plaintiffs that too when the petitioners claimed the right / title to the property, hence pleaded to set aside the order passed by the court below.

5. Though notice was ordered, served on the respondents and name has been printed in the cause list, there is no representation for the respondents either in-person or through learned counsel and there is no representation by Mr.C.K.Nataraj, learned counsel, who appears before the



C.R.P.No.1351 of 2021

court below.

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6. Heard the learned counsel for the petitioners and perused the documents placed on record.

7. It is the contention of the petitioners / defendants that Ac.4.51 in S.F.948/2B mentioned in the plaint and other properties were owned by one Ayyakutti, the paternal grand father of the respondents / plaintiffs. The said Ayyakutti had three sons, viz., Nanjukutti, father of the plaintiffs, Rangasamy and Arumugam and four daughters Andal, Angammal, Ponnammal and Rajammal. The said Ayyakutti died in the year 1972 and his wife Vettaiyammal died subsequently, long back. On their death, as his only legal heirs, the said three sons and four daughters became entitled to the properties in equal. Suppressing the sale deeds dated 05.09.1996, 23.09.2002, the respondents / plaintiffs have fraudulently created the partition deed dated 02.08.2007 behind the back of the above said four daughters of the above said Ayyakutti and legal heirs with vague and incorrect description and incorrect boundaries. Further, the boundary recitals in the alleged deed of partition would show that the property cannot be identified. Further, the remedy of the respondents / plaintiffs is to file a



C.R.P.No.1351 of 2021

suit for declaration and for recovery of possession and they are not entitled to file a suit for bare demarcation, thereby pleaded to set aside the order passed by the court below.

8. On the contrary, it is the case of the respondents / plaintiffs that the respondents / plaintiffs have made several attempts to encroach into the suit property taking advantage of the fact that there is no demarcation between the suit property and the property of the defendants on the southern side. Since there is no co-operation on the side of the petitioners / defendants to measure the property, the respondents / plaintiffs have filed the suit for demarcation of the suit property.

9. It is to be noted that the petition in I.A.No. 748 of 2007 has been filed for appointment of an advocate commissioner to measure the petition mentioned property with the assistance of a qualified surveyor for demarcation and fixation of the boundary lines as per the title deeds, since there was no demarcation of the boundary line, misunderstanding arose between the parties often in respect of the boundary. Further, the contentions in the plaint and the written statement can be considered and concluded only after detailed trial.



C.R.P.No.1351 of 2021

WEB COPY

10. The court below in its order has rightly stated that the petition in I.A. was filed only to demarcate the property by appointing an advocate commissioner. However, the parties cannot seek to appoint advocate commissioner in order to collect the evidence, and the suit has been filed only to demarcate the property, hence the court below has rightly, upon considering the submissions advanced on either side and the Order of this Court has allowed the petition, which is perfectly valid and does not require any interference.

11. Moreover, whenever there is a dispute between two parties as regards the location of a boundary separating their neighbouring properties and if on a demand to co-operate in fixing the boundary, it is not given, a suit will lie at the instance of the demanding party, as per decision of **Hon'ble Supreme Court** [E. Achuthan Nair Vs. P. Narayanan Nair and Anr] reported in AIR 1987 SC 2137 .

In view of the above, the present Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06.02.2023



C.R.P.No.1351 of 2021

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

The District Munsif, Mettupalayam

V.BHAVANI SUBBAROYAN J.

ssd

**C.R.P.No.1351 of 2021
C.M.P.No.10452 of 2021**

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WEB COPY



C.R.P.No.1351 of 2021