



C.R.P.No.3416 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2023

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.No.3416 of 2017

and

C.M.P.No.15913 of 2017

1. Ganesan
2. Anandan

... Petitioners

Vs

1. Lakshmi
2. Paramasivam
3. Krishnamoorthy
4. Ramaiyan Servai
5. Vellaisamy

6. The Tahsildar,
Mayiladuthurai
Pattamangalam Street,
Mayiladuthurai Town,
Nagapattinam District.

7. The Sub Registrar Joint No.2,
Mahadana Street,
Mayiladuthurai Town,
Nagapattinam District.



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8. The State of Tamil Nadu,
Rep. by Collector of Nagapattinam,
Collectorate, Nagapattinam.
(Respondents 5 to 8 are not necessary
parties in CRP. Hence given up)

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the
Constitution of India to set aside the fair and final order of the Additional
District Munsif, Mayiladuthurai dated 04.11.2016 made in I.A.No.601 of
2015 in O.S.No.108 of 2014 and dismiss the said petition.

For Petitioners : Mr. B.Jawahar
For R1 to R4 : Mr.D.Sai Kumaran
For R5 to R8 : Given up

ORDER

This Civil Revision Petition has been filed to set aside the fair and
final order dated 04.11.2016 passed in I.A.No.601 of 2015 in O.S.No.108 of
2014 on the file of the Additional District Munsif, Mayiladuthurai, thereby
appointing an Advocate Commissioner to inspect and measure the suit
property with the help of Taluk Surveyor.

2. The petitioners are the defendants in the suit filed by the
respondents 1 to 5 herein for declaration declaring that the registered sale
deed executed in favour of the petitioners vide document No.1820 of 2009
as null and void. The case of the respondents 1 to 4 is that the suit property



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is about one cent, out of 9 cents in Survey No.64/16, situated in Varathampattu Village, Mayiladuthirai Taluk. Five persons are joint patta holders in the chitta to the entire extent of property. The petitioners are father and son and they owned property comprised in Survey No.64/32 which is contiguous Survey No.64/16. In fact, the third defendant also constructed a house in Survey No.64/32. He had encroached the portion of the property comprised in Survey No.64/16. Therefore, questioning and challenging the sale deed executed in favour of the first petitioner herein in respect of the property comprised in Survey No.64/16, the present suit in O.S.No.108 of 2014 has been filed.

3. Pending suit, the respondents 1 to 4 herein filed an application for appointment of Advocate Commissioner to note down the physical features and also demarcate the property comprised in Survey No.64/16 and 64/32 in order to find out the encroachment made in the suit property comprised in Survey No.64/16.

4. Whereas, the case of the petitioners is that the property



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admeasuring one cent, comprised in Survey No.64/16, was purchased by Vellaisamy from one Karuppaiyan Servai and thereafter, the petitioners herein purchased the same by a registered sale deed in the year 1981 and subsequently, it was rectified by the rectification deed. Further, admittedly, they had constructed a house in the suit property which is being challenged in the suit. Therefore, there is absolutely no need to appoint an Advocate Commissioner in order to find out the encroachment made by the petitioners in Survey No.64/16. Since, as per their sale deed, the first petitioner was granted patta and they had put up construction in the land comprised in Survey No.64/16.

5. The case of the respondents 1 to 4 is that the petitioners encroached a portion of the property comprised in Survey No.64/16, since it is a contiguous in the property owned by the petitioners comprised in Survey No.64/32. Therefore, it is clear that the petitioners owned property comprised in Survey No.64/32 and by way of sale deed, they purchased the suit property comprised in Survey No.64/16 and thereafter put up construction. Therefore, the respondents 1 to 4 herein have to prove their



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case by letting in oral and documentary evidence. Hence, the Trial Court ought not to have allowed the petition for appointment of Advocate Commissioner.

6. In view of the above, the order dated 04.11.2016 passed in I.A.No.601 of 2015 in O.S.No.108 of 2014 on the file of the Additional District Munsif, Mayiladuthurai, is hereby set aside. Accordingly, this Civil Revision Petition stands allowed. The Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

03.03.2023

Index:Yes/No
Internet:Yes/No
Lpp

To

The District Munsif,
Mayiladuthurai.

G.K.ILANTHIRAIYAN, J.



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