



CRP No.4253 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.11.2023

CORAM :

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

Civil Revision Petition No.4253 of 2023
and
CMP.No.25917 of 2023

1.Karunakaran
2.Gnanambigai
3.Boopalan
4.Chandiran

... Petitioners

Versus

R.Velmurugan

... Respondent

Civil Revision Petition filed Under Article 227 of the Constitution of India, praying to set aside the order dated 09.08.2023 passed by the learned I Additional District Munsif, Puducherry in I.A.No.107 of 2023 in O.S.No.781 of 2016.

For Petitioners : Mr. V.Ilamurugan

ORDER

The petitioners have filed this revision petition to set aside the order dated 09.08.2023 passed by the learned I Additional District Munsif, Puducherry in I.A.No.107 of 2023 in O.S.No.781 of 2016.



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WEB COPY 2. Heard, Mr.V.Ilamurugan, learned counsel for the petitioners and perused the materials available on record.

3. Before the trial Court the respondent has filed a suit for permanent injunction, as well as interim injunction and other consequential reliefs. The respondent has no right, title in the C Schedule mentioned property, which is an inclusive of A Schedule property belongs to him as per the partition deed dated 12.06.2008, due to keeping 3 feet breadth and 60 feet length as vacant, the respondent trespassed and making constructions over the same. Thereafter, the defendants have filed an application to appoint an Advocate Commissioner in order to show the encroachment made by them over the suit property in I.A.334 of 2016, Advocate Commissioner was appointed but steps were not taken. Again for the same purpose, they have filed an application in I.A.No.107 of 2023 in O.S.No.781 of 2016, to appoint an Advocate Commissioner to note down the physical features of the suit scheduled mentioned properties i.e., A,B & C as per the respective title of mine and the respondent and find out whether the respondent is constructing his construction according to his title deed or not and also find out that whether the C Schedule mentioned property is inclusive with A Schedule mentioned



property or not for ascertaining the facts of the case. On considering both side submissions, the learned trial Judge holding that the suit is bare injunction, the respondent has burden of proof through prove his case whether he is in possession and enjoyment of property. The Honourable Supreme Court as well as this Court categorically observed the Judgment in a bare injunction suit the Advocate Commissioner application will not entertain to helpful collection of evidence from the property in favour of parties. The following Judgement of this Court ***reported in "2020(1)CTC 182 High Court of Madras S.Anand and others Vs.A.Jeyabalan and others"*** clearly show the facts of the case, which reads as follows:

"...

10. However, such an appointment must be only in cases where it is necessary for localising the property, when there is a dispute regarding boundaries or there is an attempt made to alter the physical features of the property, etc., In a suit for bare injunction, the Courts are normally reluctant to appoint a Commissioner for noting down the Physical feature of the property, since in most of the cases, it will amount to collecting evidence in favour of one of the parties."

The learned trial Judge strongly noted that, with an intention to collect

<https://www.mhc.tn.gov.in/> the evidence of property, application has been filed by the defendants, and the



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same was dismissed accordingly. To drag on the proceedings, the defendants have filed such application, as such is not permissible. Challenging the same the revision petitioners have preferred this revision.

4. The learned counsel for the revision petitioners submitted that on earlier occasion in I.A.No.334 of 2016 they have filed an application to appoint Advocate Commissioner. Thereafter, Advocate Commissioner was appointed, but he has not executed the warrant, therefore they, filed a fresh application. Admittedly, as on date, I.A.No.334 of 2016 was closed and a similar application was filed by the same revision petitioners. As per his submission, the Commissioner was not inclined to execute the warrant, and under such circumstances, he ought to have re-called the warrant and insisted the Court to appoint a new Commissioner. Instead of that, now he is coming with a fresh application. According to him, the earlier application filed by the petitioners was closed due to non-execution of warrant. He further submitted that A-schedule property was allotted to him, but in respect of C-Schedule property, there exists a dispute and there was some encroachment. If an opportunity has not been given, his valuable right will be defeated.



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5. Already Commissioner was appointed by the trial Court. Considering the relief, this Court is inclined to set aside the findings given by the learned trial judge in I.A.No.107 of 2023. However, the learned trial Judge is directed to appoint Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order. On such appointment of Commissioner, the revision petitioners are directed to assist the Commissioner to execute the warrant.

6. In view of the above, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

20.11.2023

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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To

1. The I Additional District Munsif, Puducherry.
2. The Section Officer,
VR-Section, High Court of Madras.



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T.V.THAMILSELVI, J.

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