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C.R.P(MD).No.2228 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.04.2023

Pronounced on : 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(MD).No.2228 of 2019

and

C.M.P(MD)No.11571 of 2019

1.Sivasubramaniyam

2.Rajeswari

3.Muthu Lakshmi

4.Sakthi Saravanan

5.Mareeswari

6.Rahul

7.Minor.Jeya Akshya

... Revision Petitioners

Vs.

Rajeswari

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 21.10.2019 made in I.A.No.157 of 2017 in O.S.No.41 of 2016 on the file of the Additional Subordinate Court, Srivilliputtur and set aside the same.



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For Petitioners : Mr.S.Venkatesh
For Respondent : Mr.M.Ashok Kumar

ORDER

This Civil Revision Petition is filed against the fair order and decreetal order passed in I.A.No.157 of 2017 in O.S.No.41 of 2016 dated 21.10.2019 on the file of the Additional Subordinate Court, Srivilliputtur.

2. The brief facts of the case:

The revision petitioners are the plaintiffs in O.S.No.41 of 2016 on the file of the Additional Subordinate Court, Srivilliputtur and they filed the suit against the defendant for declaration of their title over the item No.2 of suit properties and consequential permanent injunction. The respondent, who is the defendant therein, has filed a detailed written statement-cum-counter claim for mandatory injunction to remove the encroachment made by the plaintiffs in the 3rd item suit property and also for declaration and permanent injunction. Pending suit and before commencement of trial of the suit, the defendant has filed the petition in I.A.No.157 of 2017 in O.S.No.41 of 2016 for appointment of advocate/commissioner to visit the suit properties with Rajapalayam



Municipality Surveyor and to file a report in respect of encroachment.

The plaintiffs have objected the petition by filing counter. After hearing both, the Trial Court has allowed the petition in I.A.No.157 of 2017 in O.S.No.41 of 2016 on 21.10.2019. Aggrieved by the order of the Trial Court, the petitioners/plaintiffs moved this Court by way of this Civil Revision Petition.

3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioners has argued that the petitioners have filed the main suit in O.S.No.41 of 2016 against the respondent before the Trial Court for declaration and permanent injunction in respect of suit properties consisting three items. The petitioners claimed title over the 2nd item of suit property. The 3rd item is different property and situated opposite side of the item Nos.1 and 2 of the suit properties. The petitioners have not sought any relief in respect of 3rd item of suit property. In earlier suit in O.S.No.146 of 2006 on the file of the District Munsif Court, Srivilliputtur, already an advocate/commissioner was appointed and a report was also filed in that suit. But, the Trial Court has allowed the petition without assigning



valid reason. Therefore, the impugned order has to be set aside and the revision petition may be allowed.

5. Per contra, the learned counsel for the respondent vehemently argued that the petitioners have filed the main suit seeking the relief of declaration and permanent injunction in respect of 2nd item of suit property only. The respondents made rival claim over the 3rd item of the suit property and filed a counter claim for declaring his title over the 3rd item of the suit property on the ground that the petitioners encroached in it after obtaining interim injunction in the main suit. The respondent is also to be a plaintiff in the suit properties and therefore, she sought appointment of advocate commissioner to note down the physical features of the suit properties even prior to the commencement of the trial of the suit. The commissioner's report would reduce the letting in evidence on both sides. Considering all these aspects, the Trial Court has allowed the petition, which warrants no interference by this Court. Hence, the petitioners have no valid case in this Civil Revision Petition and the same may be dismissed.



6. On hearing both and on perusal of records, it is clear that the revision petitioners have filed the main suit for declaration and permanent injunction in respect of 2nd item of the suit properties. The respondent has also filed the counter claim for declaration and mandatory injunction in respect of 3rd item of the suit properties. The trial of the suit is yet to be commenced. There is no dispute for the above facts. It is the main case of the respondent that the petitioners have encroached a portion of the the 3rd item and raised a wall in it. The petitioners have stated in their counter that they have not made any encroachment. There is nothing wrong in filing petition for appointment of advocate commissioner by the respondent and appointment of advocate/commissioner would not be prejudiced in any manner to the petitioners. Further, it will assist the Trial Court while letting in evidence on both sides as rightly argued by the respondent. Therefore, considering the nature of the relief sought in the suit and counter claim and considering the stage of the suit proceedings, the Trial Court has correctly allowed the petition by passing the impugned order I.A.No.157 of 2017 in O.S.No.41 of 2016, which warrants no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.



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7. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is also dismissed.

21.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1.The Additional Subordinate Court,
Srivilliputtur.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
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