



C.R.P.No.1169 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.R.P.No.1169 of 2023

and

C.M.P.No.8093 of 2023

1.Rathna
2.Jothi
3.Shoban
4.Suresh

... Petitioners/Plaintiffs
Vs.

Naniappan ... Respondent / Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to set aside the decree and order passed by the Additional Sub-Ordinate Judge, Ponneri dated 22.09.2022 passed in I.A.No.1 of 2021 in O.S.No.284 of 2019.

For Petitioners : Mr.U.Gowrishankar

For Respondent : Mr.Dharanikumar

ORDER

This Civil Revision Petition is filed by the plaintiffs No.1 to 4 against the order passed in I.A.No.1 of 2021 in O.S.No.284 of 2019 on the file of



C.R.P.No.1169 of 2023

the Additional Sub-Court, Ponneri, Tiruvallur District, filed under Order VI Rule 17 CPC.

2. Heard Mr.U.Gowrishankar, learned counsel appearing for the petitioner and Mr.Dharanikumar, learned counsel appearing for the respondent.

3. Suit is laid for declaration of title and recovery of possession of B-schedule property and for other reliefs.

4. The total extent of the suit property shown in A-schedule property comprised in S.No.38/5H, Plot No.71, to an extent of 1200 sq.ft., situate at Ilango Nagar, Ariyanvoyal Village, Ponneri Taluk, Tiruvallur District. The encroached portion of A-schedule property is shown as B-schedule property as 780 sq.ft., out of 1200 sq.ft.

5. At the instance of the plaintiffs, an application for appointment of Advocate Commissioner in I.A.No.609 of 2019 was taken and it was ordered accordingly. The Advocate Commissioner visited the suit property



C.R.P.No.1169 of 2023

WEB COPY

and filed his report. Wherein, the Advocate Commissioner has stated in his report that an extent of 915 sq.ft., of plot has been encroached into the suit property. Based on the same, the plaintiffs filed petition, sought for permission to amend the B-schedule extent details as 915 sq.ft. instead of "780 sq.ft."

6. The respondent/defendant counteracted by stating that he was not present when the Advocate Commissioner executed his warrant: neighbour's survey numbers are not shown in the rough sketch and for that reason he sought for dismissal of the petition.

7. The trial Court upon consideration, concluded that the Advocate Commissioner has identified land connected with S.No.38/12 and it is not shown in the rough sketch for the suit property and for the said reason, the trial Court chose to dismiss the petition. Aggrieved, the present civil revision petition has been filed by the plaintiffs.

8. On a careful perusal of the records, it appears that initially the



C.R.P.No.1169 of 2023

plaintiffs have shown the encroached extent of the property as 780 sq.ft., out of 1200 sq.ft.(A-schedule) in the plaint schedule of property. Based on the details found in the report of the Advocate Commissioner, an application under Order VI Rule 17 of CPC was taken out by the plaintiffs, sought for permission to amend the extent details in B-schedule property as 915 sq.ft., instead of 780 sq.ft.

9. It has been stated that trial is yet to be commenced. The object behind the appointment of Advocate Commissioner is that based on the evidence it would enable the Court to properly understand and assess the evidence. The parties are at liberty to file their objections if any as to the report of the Advocate Commissioner. The trial Court has dismissed the amendment petition on the sole ground that S.No.38/12 is not shown in the rough sketch. The rough sketch is filed in order to show, the lie and location of the property and it is not an authenticated document. Even if it is admitted that S.No.38/5H is not shown in the rough sketch that cannot be taken as ground for dismissal of amendment petition filed by the plaintiffs. Based on the report of the Advocate Commissioner, the revision petitioners/plaintiffs, filed the amendment petition seeking permission of



C.R.P.No.1169 of 2023

WEB COPY

the trial Court to correct the encroached area of the suit property.

10. I am of the considered view that the trial Court has diverted its views as mentioned supra which is not correct. For the afore stated reasons, in order to have complete justice to the parties, this Civil Revision Petition stands allowed and the Order passed in I.A.No.1 of 2021 in O.S.No.284 of 2019 filed under Order VI Rule 17 CPC on the file of the Additional Sub-Court Court, Ponneri, stands set aside. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed. Considering the fact that the suit is of the year 2019, the trial Court shall dispose of the suit preferably within eight months from the date of receipt of copy of this order.

08.08.2024

Index : Yes / No
Neutral Citation Case : Yes / No
Speaking Order / Non-Speaking Order
ssn

To
The Additional Sub-Ordinate Judge,



C.R.P.No.1169 of 2023

Ponneri.

R.KALAIMATHI, J.,

ssn

C.R.P.No.1169 of 2023

and

C.M.P.No.8093 of 2023



WEB COPY



C.R.P.No.1169 of 2023

08.08.2024