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CRP.No.1417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1417 of 2021
and
CMP.No.11069 of 2021

1.Vijayarani
2.Sivashankari
3.Naveen Raja
4.Prabu
5.Kamalakaran

... Petitioners

Vs.

Vijayaragavan

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 13.01.2020 made in I.A.No.01 of 2019 in A.S.No.36 of 2019 on the file of the Subordinate Judge No.II, Jayankondam.

For Petitioners : Mr.M.Senthil Vadivu

For Respondent : Mr.M.Muthukrishnan



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ORDER

This Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners seeking re-issue of warrant to the Advocate Commissioner in a pending first Appeal.

2. The respondent herein filed a suit seeking declaration of title and recovery of possession in the suit. At the instance of the respondent an Advocate Commissioner was appointed and he filed a report and plan noting down the physical features of the suit property. The petitioners have not taken any steps before the trial Court seeking re-issue of warrant for measuring the property with the help of the Surveyor. The Court below found that the respondent proved his title over the property and the petitioners failed to establish the right to possession of the property and accordingly a decree for declaration of title and recovery of possession was passed in favour of the respondent. Aggrieved by the same, the petitioners herein preferred an appeal in A.S.No.130 of 2017 on the file of the Sub-Court, Jayamkondam. Pending first appeal, the instant application has been filed by the petitioner seeking re-issue of warrant to the Advocate Commissioner.



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3. In the affidavit filed in support of the application, it was stated by the petitioners that the Advocate Commissioner, in his report mentioned that, unless the property was measured with the help of Surveyor it might not be possible to fix the western boundary of the suit property. Therefore, it is the case of the petitioners that the Advocate Commissioner filed his report with approximate measurement and therefore, the warrant shall be re-issued to the Advocate Commissioner to measure the suit property with the help of Surveyor and file a fresh report.

4. When the Advocate Commissioner filed his report before the trial Court the petitioners failed to file any objection for the same. When he had opportunity to seek re-issue of warrant, he failed to do such exercise before the trial Court. The petitioner has not given any convincing explanation for his failure to seek re-issue of warrant before the trial Court. Further the trial Court found the respondent proved his title over the suit property and the petitioner failed to substantiate his defence and entitlement to possession over the suit property.



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5. In such circumstances, the petitioner is unable to explain how the measurement of the suit property with the help of the Surveyor would advance his case. In such circumstances, I do not find any error in the order passed by the Court below and accordingly, the Civil Revision Petition is dismissed. Having regard to the fact that the first appeal is of the year 2019, the Court below is directed to dispose of the same as expeditiously as possible. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

01.02.2024

Index : Yes / No
Internet : Yes / No
dna

To

The Subordinate Judge No.II, Jayankondam.



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