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C.R.P. No. 3272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2024

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THE HONOURABLE MR. JUSTICE P.DHANABAL

C.R.P. No. 3272 of 2022
and
C.M.P. No. 17378 of 2022

1. T.Ramasamy Gounder

2. R.Arjunan ... Petitioners / Plaintiffs / Petitioners

Vs.

1. P.Nataraj

2. N.Balakrishnan

3. N.Satishkumar ... Respondents / Defendants / Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, to set aside the fair and final order dated 05.03.2022 passed in I.A. No. 486 of 2020 in O.S. No. 229 of 2020 on the file of the Principal District Munsif, Tiruppur.

For Petitioners : Ms. D.Chitra Maragatham

For Respondents : M/s. PV Law Associates



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ORDER

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This Civil Revision Petition has been preferred as against the order dated 05.03.2022 made in I.A. No. 486 of 2020 in O.S. No. 229 of 2020 passed by the Principal District Munsif, Tiruppur, wherein the petitioners have filed petition before the Trial Court for appointment of the Commissioner to note down the physical features and also to measure and fix the actual position of Survey Stones of the suit properties with assistance of Tiruppur South Taluk Surveyor and VAO of Kandiankoil Village and to file report with map and plan and the same was dismissed by the Trial Court.

2. The petitioners are the plaintiffs in the main suit and they filed the suit for the relief of permanent injunction and mandatory injunction directing the defendants to reinstall the boundary stones and iron fence with the assistance of the Taluk Surveyor and VAO of Kandiankoil Village in its original position of the suit land in S.F. No. 806/8. During the pendency of the suit, the plaintiffs filed petition for appointment of Commissioner stating that they are the absolute owner of the suit properties through partition deed dated 02.10.1977. The 'C' Schedule property was allotted to the plaintiffs through that partition. Out of the properties mentioned in the said 'C' Schedule property, as per the said partition deed dated 02.10.1977, the land with an



extent of 3.40 acres in Survey No. 806/8 is the suit property herein.

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3. The 1st respondent / 1st defendant is the father of the 2nd and 3rd respondents / 2nd and 3rd defendants and they are having lands in Survey No. 806/6 situated on the northern side of the suit land. The survey boundary stones fixed between the suit land and the defendants' land were missing by the evil act of the respondents/defendants and they snatched and picked off the survey stones and throw out the same to some other place. On 23.09.2020, the petitioners applied for measurement with the assistance of Surveyor but the respondents/defendants resisted to measure the suit property. Therefore, the Surveyor was unable to measure the property. Thereby, they filed suit and they are entitled to an order of mandatory injunction to reinstall and re-fix the boundary stones which are removed by the respondents/defendants. Therefore, now they filed petition for appointment of Commissioner to note down the physical features and also to measure and fix the actual position of Survey Stones of the suit properties with the assistance of Surveyor.

4. The respondents objected for appointment of Commissioner and they filed counter stating that the respondents owned lands in S.F. No. 806/6 which is situated in northern side of the suit property i.e., S.F. No. 806/8.

They denied that they removed the boundary stones between the petitioners'



land and the respondents' land and they also denied that the petitioners have applied for survey the lands and the respondents have resisted. In fact, the 1st respondent purchased the property through sale deed dated 17.07.2006 for an extent of 1.17 acres in S.F. No. 806/6 and 806/5 of Kandiankovil Village for valid consideration. Subsequently, on 27.01.2010, the 1st respondent has executed the settlement deed in favour of the 2nd and 3rd respondents. Thereafter, the properties covered under the settlement deed has been subdivided as S.F. No. 806/6B. The property in S.F. No. 806/6B is situated on the northern side of the S.F. No. 806/8 and between the lands there is a well formed ridge with thorns, bushes, small trees and boundary stones, etc., which demarcates the properties of the petitioners and respondents. There are well grown coconut trees situated abutting the east west ridge on the southern south side owned by the petitioners. Therefore, the petitioners filed the application with false averments. In fact, there was no such boundary stones existed as alleged by the petitioners and the allegations in affidavit are bald and they are not entitled to any relief through this petition. Hence, the petition is liable to be dismissed.

5. Before the Trial Court, no oral or documentary evidences adduced on either side. The Trial Court, after hearing both sides, dismissed the petition.



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6. The learned counsel appearing for the petitioners would contend that the petitioners are the plaintiffs in the main suit and they filed suit for the relief of permanent injunction and for mandatory injunction to fix the boundary stones with the help of the Surveyor. During the pendency of the suit, they filed an application for appointment of Commissioner to fix the boundary stones and also to note down the physical features of the property. But the Trial Court without considering the nature of the suit, dismissed the petition and thereby, the order passed by the Trial Court is liable to be set aside.

7. The learned counsel appearing for the respondents would contend that the petitioners have filed petition for the relief of permanent injunction and for mandatory injunction to fix the boundary stones. While so, they filed application for appointment of Commissioner for the purpose of note down the physical features, to measure the property and to lay boundary stones which is the main relief sought for by the petitioners in the main suit and the same cannot be granted at the stage of interim injunction. If the petition is allowed, then the main prayer itself will become infructuous due to this application. Therefore, the Trial Court after hearing both sides, dismissed the petition. By holding that the main suit has been filed for the relief of



mandatory injunction to reinstall the boundary stones, if the petition is allowed, then the same will be tantamount to satisfaction of mandatory injunction decree and the same will cause severe prejudice to the respondents. Therefore, the above said order passed by the Trial Court is proper and the present Civil Revision Petition is liable to be dismissed.

8. This Court heard both sides and perused the materials available on record.

9. In this case, there is no dispute that the petitioners have filed suit as against the respondents for the relief of permanent injunction and for mandatory injunction to re-install the boundary stones and iron fence with the assistance of the Taluk Surveyor and VAO of Kandiankoil Village to its original position of the suit land in S.F. No. 806/8. While so, during the pendency of the suit, they filed application for appointment of Commissioner to note down the physical features, to measure the property and to fix the boundary stones. Therefore, the prayer itself shows that nothing but it is sought for in the main suit for mandatory injunction. It is well settled law that the main relief cannot be granted at an interim stage without justifiable reasons.



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10. At this juncture, the learned counsel appearing for the petitioners has relied on the judgments in *Jose -vs- Johnson* reported in (2020) 3 SCC 780, *Shanmugathai -vs- Kamalammal* reported in (2017) 2 MWN (Civil) 315, *Sridharan -vs- Ramesh* reported in MANU/TN/5838/2021 and *Kandipalayam Rajavaikkal Siru Vivasaiyigal Neertru Pasana Sangam -vs- Nanjay Edayar Vivasaiyigal Sangam by its President, N.M. Mayandi Gounder* reported in 2017 (2) CTC 404. On a careful perusal of the judgments, it is clear that they will not be applicable to the present facts of the case, because in this case, the main relief itself sought for through interim application for appointment of Commissioner to fix the boundary stones.

11. The learned counsel appearing for the respondents has relied on the judgments of the Hon'ble Supreme Court of India in *State of U.P. and others -vs- Ram Sukhi Devi* reported in (2005) 9 SCC 733 and *Deoraj -vs- State of Maharashtra and Ors.* reported in AIR 2004 SC 1975. On a careful perusal of the above judgments, it is clear that the relief sought for in the main suit cannot be granted at the interim stage and also it is clear that in rare and exceptional cases, the Court would grant such an interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated



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throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. But in the case on hand, there is no availability of strong *prima facie* case and also not come under the category of rare and exceptional case. Once, the petitioners filed suit for permanent injunction and for mandatory injunction to fix the boundary stones, the said main relief cannot be granted in the form of interim relief that is by appointing Commissioner to fix the boundary stones. The Trial Court also in this context, after careful perusal of the documents and considering the facts and circumstances of the case, correctly dismissed the petition and thereby, there is no perversity or infirmity in the order of the Trial Court and it does not warrant interference.

12. In view of the aforesaid discussions, this Court is of the opinion that this Civil Revision Petition has no merits and deserves to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index : Yes/No
Speaking order : Yes/No
NCC : Yes/No
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To

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The Principal District Munsif, Tiruppur.



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P.DHANABAL, J.,

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