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C.R.P.No.1972 of 2020



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.1972 of 2020

and

CMP No.12243 of 2020

1. P. Thangammal W/o. Late D. Palanivel
 2. Arul Durai Murugan S/o. Late D. Palanivel
 3. P. Anantheswari D/o. Late D. Palanivel
- ... Petitioners

Vs.

1. Velmurugan S/o. Late Krishnan
 2. Venkittu @ Venkatesan S/o. Late Krishnan
- ...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order of the learned I Additional District Munsif, Salem in I.A. No.1 of 2019 in I.A. No.551 of 2015 in I.A. No.1552 of 2014 in O.S. No.902 of 2014 dated 28.08.2020.

For Petitioner : Mr. M. Sachin Vijay for
Ms. V. Srimathi

For Respondents : Mr. V.S. Jagadeesan



ORDER

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The Civil Revision Petition is filed challenging the order passed by the trial Court dismissing the application filed by the petitioner seeking appointment of second Advocate Commissioner for local investigation to measure the properties.

2. The petitioner herein filed the Suit seeking for permanent injunction against the respondents. Initially at the instance of the petitioner, an Advocate Commissioner was appointed and he also visited and measured the property with the help of surveyor and filed his report. Not satisfied with the report of the Advocate Commissioner, the petitioner has filed the instant application seeking appointment of an another Advocate Commissioner.

3. In the affidavit filed in support of the present petition, it was stated by the petitioner that the respondents encroached the suit property to an extent of 90 feet x 1 ½ feet on the western side and the same has not been noted by the Advocate Commissioner.



4. The Trial Court dismissed the application filed by the petitioner on the ground that the second Advocate Commissioner cannot be appointed without scraping the earlier report of Advocate Commissioner.

5. A perusal of the Advocate Commissioner's report and plan would suggest that, in Para 3 of the report, it is mentioned that a compound wall has been constructed by the petitioners in K to L portions and L to A portion remains vacant without any construction. However, in the plan annexed with his report, the Advocate Commissioner had shown construction only in L to A portion. Therefore, there is no clarity in the Advocate Commissioner's report and plan whether there is any construction in L to A Portion and any portion of petitioners' property is encroached on the western side by the respondents. Therefore, the Trial Court is directed to re-issue warrant to the same Advocate Commissioner. The Advocate Commissioner shall measure the property of the petitioners and the respondents again with the help of surveyors with reference to their respective title documents and file a fresh report as to whether there is any construction in K L A line and any portion of property of the petitioners is encroached by putting up a construction.



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6. Having regard to the fact that the suit is of the year 2014, the Trial Court shall ensure that the appointment of the Advocate Commissioner and filing of a fresh report shall be completed within a period of 8 weeks from the date of receipt of copy of this order. No costs.

7. With these directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes / No
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To
The I Additional District Munsif, Salem.



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S.SOUNTHAR, J.

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