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CRP.(PD).No.3961 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.(PD).No.3961 of 2022
and CMP.No.20634 of 2022

1.Koteeswaran

2.Murugan

...Petitioners/Plaintiffs

Vs.

Latha

...Respondent/Defendant

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the order dated 18.07.2022 in I.A.No.335 of 2021 in O.S.No.48 of 2015 on the file of the District Munsiff Court, Arani, Thiruvanamalai.

For Petitioners : Mr.V.Lokesh Kumar

ORDER

This Civil Revision Petition has been filed as against the order dated 18.07.2022 passed in I.A.No.335 of 2021 in O.S.No.48 of 2015 on the file of District Munsiff Court, Arani, Thiruvanamalai, wherein the petitioner herein has filed I.A to revisit the commissioner and measure the suit property and the same was dismissed. Challenging the said order, the present petition has been filed.

2. According to the second petitioner, he is the brother of the first



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petitioner and he filed affidavit on behalf of his brother also. He filed the main suit for the relief of permanent injunction and mandatory injunction.

Thereafter, the respondent herein filed petition for appoint of Commissioner and the commissioner was also appointed to note down the physical features and to file report. The commissioner's report, has not reflected the real position of the property. Already the petitioners have filed their objections for the commissioner's report. The Commissioner also enclosed the rough sketch. In the rough sketch, they mentioned the vacant site. The respondent's land is situated adjacent south side of the suit property. The respondent constructed toilet bath room in the poromboke land which was enjoyed by the petitioners. Already the commissioner was appointed in I.A.No.210 of 2015 and the commissioner inspected the suit property on 26.04.2015 and also filed report. When the petitioner has filed objections for the report, the surveyor has not mentioned about the real existence of the properties. There are discrepancies between the report of the surveyor and the commissioner. Therefore, the commissioner has to revisit the property with another surveyor. Hence, the petitioner has filed this civil revision petition.

3. According to the respondent, he filed counter before the trial Court stating that the petition is not maintainable. Already commissioner inspected the physical features with the help of surveyor and filed report. The petitioners



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have already filed any objections and now filed this petition seeking revisit of the advocate commissioner to drag on proceedings. If any grievance in the Commissioner's report, they can examine the Commissioner at the time of trial. Hence, this petition is liable to be dismissed.

4. Considering the nature of the application without serving notice respondent, this Court is inclined to dispose the case at the stage of admission itself. After hearing the petitioner, This Court passed the order at the stage of admission itself.

5. The petitioner himself admitted that already Commissioner inspected the suit property and he also filed objections. Despite filed this petition to revisit the properties by the commissioner through another surveyor. The petitioners contention is that the surveyor has not considered the objections of the petitioners.

6. Once the petitioner filed objections to the earlier commissioner report, he can agitate the same at the time of trial by examining the Advocate Commissioner. It is not the case of the petitioner that he was not present at the time of inspection made by the Advocate Commissioner. But only to revisit the properties which was already visited by the Commissioner on the ground



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that the Surveyor has not considered his objection. Therefore, the contention of the petitioner to revisit the property is not acceptable. The trial Court also in the order held that the commissioner already inspected the property and also measured the properties and thereby, dismissed the application. Therefore, there is no infirmity or perversity found in the impugned order passed by the trial Court. The petitioner is at liberty to examine the Advocate Commissioner before the trial Court if necessary.

7. With the above said observations, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

05.04.2024

Index : Yes/No
Speaking order/non-speaking order
mpa

To
The District Munsiff Court, Arani, Thiruvananthapuram.

P.DHANABAL, J.,



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