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C.R.P.(PD).No.2961 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2961 of 2021

and

C.M.P.No.21189 of 2021

- 1.Sathiyamarayanan
- 2.Kalaivani @ Kanchana
- 3.Uma Maheswari
- 4.Sangeetha

... Petitioners

Versus

- 1.Subbaiya
- 2.Soundararajan
- 3.The Sub-Registrar,
Sub Registrar Office,
Nellikuppam.

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decretal Order dated 22.11.2021 passed in I.A. No.488 of 2018 in O.S.No.15 of 2010 on the file of the District Munsif Court, Panruti.

For Petitioner : Mr. R. Meenal

For Respondents : Mr. T. Thiagarajan (for R1 & R2)

: Mr. C. Sathish, Government Advocate (for R3)



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ORDER

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This Civil Revision Petition is filed challenging the order passed by the Trial Court allowing the application in I.A.No.488 of 2018 in O.S.No.15 of 2010 filed by the respondents/plaintiffs seeking an appointment of Advocate Commissioner to measure the suit property.

2. The first and second respondents herein/plaintiffs filed a suit for declaration of title and injunction. The plaintiffs claimed right over the property under the Wills executed by their father, by name, Venkatesa Naidu. It is the specific case of the plaintiffs that after the death of Venkatesa Naidu on 14.08.1999, the Wills executed by him came into force. From that date onwards, the plaintiffs had been in possession and enjoyment of the suit property. The petitioners/defendants made an attempt to interfere with the possession of the respondents 1 and 2, hence, they were constrained to file the suit for declaration and injunction.

3. The suit filed by the respondents was mainly resisted by the petitioners/defendants on the ground that the suit property was purchased by the petitioners' father, by name, Ramachandran Naidu, through Court



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auCTION sale and after death of the said Ramachandran Naidu, the petitioners had been in possession and enjoyment of the suit property as their legal heirs.

4. A perusal of the pleadings of the parties in the suit would make it clear that both the parties are claiming right over the suit property under different documents. Therefore, the first and second respondents who filed the said suit for declaration of title and injunction and must independently prove the title and possession over the suit property and succeed.

5. Though the respondent in the affidavit filed in support of the application seeking for appointment of Advocate Commissioner, had averred that there was boundary dispute between the parties, a perusal of the plaint and written statement would establish that there is no boundary dispute between the parties and both are claiming right over the suit property under different documents. In such circumstances, there is no necessity to appoint an Advocate Commissioner to measure the property with the assistance of the Surveyor and to file a report.



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6. The Trial Court has erroneously assumed that there was a boundary dispute and appointed the Advocate Commissioner and the same is not sustainable, in the light of a definite stand that had been taken by the respective parties in their pleadings.

7. Hence, the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

12.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Case Citation : Yes / No

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To:

1.The District Munsif Court, Panruti.



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S. SOUNTHAR. J.,

klt

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