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C.R.P.No.3024 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.No.3024 of 2021
and
C.M.P.No.21445 of 2021

1.Mr.S.Venkatesan
2.Mrs.S.Abaranji
3.Mrs.G.Anandhi
4.Mr.G.Aravind Kumar
5.Mrs.G.Gomathi

... Petitioners

Vs.

1.Mr.Sebastian
2.Dr.G.Murugan
3.Mrs.Nithya Murugan

...Respondents

PRAYER: Civil Revision Petition filed under Section 115 of Civil Procedure Code, praying to set aside the fair and decretal order in I.A.No.1541 of 2011 in O.S.No.372 of 2008 on the file of District Munsif Court, Udumalpet dated 07.08.2012.

For Petitioners : Mr.T.Gowthaman
Senior Counsel
for Mr.B.Pachaiyappan

For Respondent 1 : Mr.V.Benedict Vincent
For Respondent 2 &3 : M/s.T.Thiyagarajan



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ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioners/plaintiffs to appoint an Advocate Commissioner to measure the suit property with the assistance of Taluk Surveyor and find out the dividing line between the property of the petitioners and respondents.

2. The petitioners/plaintiffs filed a suit seeking declaration of title in respect of suit B-schedule property and for recovery of vacant possession. It is the case of the petitioners that the entire suit A-schedule property belonged to him and portion of the same was encroached by the respondents/defendants and the same is shown as suit B-schedule property. The respondents filed a written statement denying any encroachment by them in the property belonged to the petitioners.

3. It is not in dispute that the trial in the matter is not yet commenced. The petitioners/plaintiffs filed an application for appointment of Advocate



Commissioner to survey the suit property with the assistance of Taluk Surveyor and find out the dividing line between the property of the petitioners and respondents. In the counter filed by the respondents, though the allegations of encroachment made by the petitioners were denied, the respondents also prayed that Court below may appoint an Advocate Commissioner to measure the property purchased by them described in the schedule appended in the counter.

4. A perusal of the pleading of the parties in the case on hand would suggest that the main dispute between the parties is whether the respondents encroached any portion of the B-schedule property or not. The said controversy can be decided by the Court only if the property is surveyed with reference to the title documents of both the parties. The said exercise will minimise the oral and documentary evidence to be let in at the time of trial. The reasoning given by the Court as if the petitioners seek to collect evidence by appointment of Advocate Commissioner is not acceptable to this Court. On the contrary, the appointment of Advocate Commissioner to survey the properties of both the petitioners and respondents with the assistance of



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Surveyor will enable the Court to decide the controversy between the parties in an effective manner. Therefore, the impugned order passed by the Court below is set aside. Accordingly, the Civil Revision Petition stands allowed.

5. The Court below is directed to appoint an Advocate Commissioner who shall measure the properties of petitioners as well as respondent with reference to their title deeds with the assistance of Taluk Surveyor. The entire exercise shall be finished within a period of 12 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

02.02.2024

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif Court, Udumalpet



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S.SOUNTHAR, J.

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