

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(PD)No.1325 of 2015 &

M.P.No.1 of 2015

1.P.Periyasamy  
2.P.Sumathi

... Petitioners

v.

Syed Athavur Rehman

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.01.2015 made in I.A.No.457 of 2014 in O.S.No. 146 of 2011 on the file of the II Additional District Munsif Court, Erode.

For Petitioner : Mr.K.A.Ravindran\_\_

### **ORDER**

Challenging the fair and final order passed in I.A.No. 457 of 2014 in O.S.No.146 of 2011 on the file of II Additional District Munsif Court, Erode, the defendants have filed the above Civil Revision Petition.

2. The plaintiff filed the suit in O.S.No.146 of 2011 for permanent injunction. Earlier, at the instance of the plaintiff, an Advocate Commissioner was appointed in I.A.No.276 of 2011 to note down the physical features. Pursuant to the orders of the trial court, the Advocate Commissioner inspected the suit property and filed his report. The defendants filed their objections for the Advocate Commissioner's report. Thereafter, in I.A.No.352 of 2012, the trial court reissued the warrant of commission to the Advocate Commissioner to reinspect the suit property and file the report. Accordingly, the Advocate Commissioner revisited the suit property and filed his report in I.A.No.352 of 2012. In I.A.No.276 of 2011, the defendants filed their objections for the 2<sup>nd</sup> commissioner's report also. Thereafter, the defendants filed an application in I.A.No.457 of 2014 before the trial court requesting the court to reinspect the suit property and make a memorandum of the relevant facts observed at such inspection. The plaintiff filed his objection and opposed the same.

3. The trial court after taking into consideration the case of both the parties, dismissed the application.

4. The Advocate Commissioner had visited the suit property twice and filed his reports on both the occasions for which, the defendants also filed their objections. Therefore, it is unnecessary on the part of the defendants to request the court to inspect the suit property and make a memorandum of

the relevant facts observed at such inspection Moreover, burden of proof lies only on the plaintiff. When the suit is listed for trial, the present application filed by the defendants would establish that the same has been filed only for dragging on the matter.

5. In these circumstances, I do not find any merit in the Civil Revision Petition. Accordingly, the Civil Revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

06.04.2015

Index : No  
Internet : Yes

Rj

To

The II Additional District Munsif Court,  
Erode.

M. DURAISWAMY,J.,

C.R.P.(PD)No.1325 of 2015

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