

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.06.2015

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1619 of 2015

1.G.Chandraguptan
2.G.Gnanaprakasam
3.G.Indirani
4.G.Veeramani
5.G.Chandrodhayan

... Petitioners

v.

1.J.Sultan Amma Sahiba
2.J.Amirudeen Ansari
3.J.Salhudeen

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 7.1.2015 made in I.A.No.13 of 2014 in A.S.No.17 of 2011 on the file of the Principal District and Sessions Judge, Tiruvarur.

For Petitioner : Mr.C.Munuswamy

For Respondents : Mr.J.Nandagopal_

O R D E R

Challenging the fair and final order passed in I.A.No.13 of 2014 in A.S.No.17 of 2011 on the file of Principal District and Sessions Judge, Tiruvarur, the defendants in O.S.No.38 of 2009 on the file of Sub Court,

Tiruvarur Court, Coimbatore have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.38 of 2009 for recovery of possession.

3. After trial, the suit was decreed. Aggrieved over the same, the defendants have filed an appeal in A.S.No.17 of 2011.

4. On the earlier occasion, the defendants filed an application in I.A.No.12 of 2013 in A.S.No.17 of 2011 under Order 26 Rule 9 CPC seeking for appointment of Advocate Commissioner. The Lower Appellate Court allowed the application and appointed an Advocate Commissioner. Since the Advocate commissioner did not file his report, the application was closed by the Lower Appellate Court. Subsequently, the defendants have filed the present application i.e. I.A.No.13 of 2014 seeking for appointment of Advocate Commissioner with the assistance of a Surveyor to inspect and measure the suit property. The Lower Appellate Court dismissed the application finding that on the earlier occasion, the defendants did not take any steps to take the Commissioner for inspection. On a reading of the order of the Lower Appellate Court, it is clear that only because of the fault of the Advocate Commissioner, the application was closed by the Lower Appellate Court.

5. When Advocate Commissioner was appointed on an earlier occasion before the Lower Appellate Court, I am of the view that an Advocate Commissioner can be appointed in the present application to measure the suit property.

6. It is pertinent to note that on the earlier occasion, Advocate Commissioner has not visited the suit property. In these circumstances, the fair and decreetal order passed in A.S.No.17 of 2011 is set aside. The application in I.A.No.13 of 2014 stands allowed as prayed for. Since the appeal is pending from 2011, I direct the Principal District and Sessions Judge, Truvarur to dispose of the appeal in A.S.No.17 of 2011 on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

With these observations, the Civil Revision Petition is allowed. No costs.

Index : No
Internet : Yes

03.06.2015

Rj

To

The Principal District and Sessions Judge,
Truvarur

M. DURAISWAMY,J.,

Rj

C.R.P.(NPD)No.1619 of 2015

03.06.2015