

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2015

CORAM

THE HONOURABLE **Mr. JUSTICE K.KALYANASUNDARAM**

CRP.(NPD).No.570 of 2010

and

M.P.No. 1 of 2010

1. Arthanari Gounder
2. Velumani
3. Venkatachalam
4. Rajavelu
5. Chinnammal

..

Petitioners

/vs/

1. Sengottuvelu
2. Nagamani
3. Kannammal
- Viswanathan (Died)
- 4.Jaganathan
- 5.Ramayee
- 6.Dhanalakshmi

..

Respondents

PRAYER This Civil Revision Petition is filed under Section 115 of Civil Procedure Code against the Fair and Decretal order dated 11.08.2009 made in I.A.No.27 of 2009 in A.S.No.159 of 2008 on the file of the Subordinate Judge's Court, Tiruchengode, Namakkal District.

For Petitioners	: Ms. P.T.Asha
	for M/s.Sarvabhauman Associates
For Respondents	: Mr.S.Palaniswamy

ORDER

This civil revision petition is directed against the order dated 11.08.2009 passed by the Subordinate Judge's Court, Tiruchengode, Namakkal District, in I.A.No.27 of 2009 in A.S.No.159 of 2008.

2. The father of the respondents 1 to 3 viz., Venkatachalam instituted a suit in O.S.No.344 of 1994 before the District Munsif, Tiruchengodu for declaration that he is entitled to use the suit cart-track to reach his land in S.No.13/17B and for permanent injunction.

3. Pending the suit, an advocate commissioner was appointed and he filed his report on 16.08.1994. After trial, the learned District Munsif decreed the suit on 28.03.2003. Aggrieved by the judgment and decree, the defendants filed an appeal before the Sub Court, Tiruchengodu in A.S.No.159 of 2008. In the appeal, the petitioners filed an application in I.A.No.27 of 2009 to reissue the warrant to the Advocate Commissioner for inspection and for further report.

4. The application was resisted by the respondents. The learned Appellate Judge dismissed the application. Aggrieved by the order, the present revision petition is filed.

5. Ms. P.T.Asha, learned counsel for the petitioners submitted that the report filed by the advocate commissioner was not correct and there was no pathway at D and E point and therefore, a fresh report of

the commissioner is very much necessary to decide the issue involved in this case.

6. Per contra, Mr.S.Palaniswamy, learned counsel for the respondents submitted that the suit was filed in the year 1994 and the suit was decreed only on 28.03.2003. The Advocate Commissioner filed his report on 16.08.1994. The application filed by the petitioners for the same relief was rejected by the trial Court. The petitioners have not filed any revision challenging the rejection of the reissue application. It is further submitted that at the Appellate stage, the petitioners have now filed the application for reissuance of warrant.

7. The learned Appellate Judge observing that in the trial Court, an advocate commissioner was appointed and his report and plan was marked in the suit and the petition to reissue the warrant to note down the physical feature was also dismissed, rejected the petition. It is an admitted case that the application filed by the petitioners before the trial Court for the same relief was rejected and they have not filed any revision against that order. Moreover, the petitioners have to satisfy the conditions contained in Order 41 Rule 27 before seeking appointment of an advocate commissioner.

8. In **2008 3 LW 160 (R.Nandakumar Vs. The Dindigul Co.op Housing Building Society Limited, rep. by its Secretary Nehruji Nagar, Dindigul)**, this Court has held as follows:

" 8. Appointment of Advocate -Commissioner in the Appellate stage in the Appellate court and receiving the Commissioner's report as additional evidence is not automatic. Under Or.41, Rule 27 CPC production of additional evidence whether oral or documentary is permitted only under three circumstances (i) the trial court had refused to admit the evidence though it ought to have been admitted; (ii) the evidence was not available to the party despite exercise of due diligence and (iii) the appellate court required the additional evidence so as to enable it to pronounce better judgment or for any other substantial cause of like nature. The basic principle requisite for admission of additional evidence is the existence of one or other of the above said conditions.

9. Only if the conditions of Or.41, Rule 27 CPC are satisfied, the court would have jurisdiction to receive the additional evidence. Additional evidence will not be admitted when party had ample opportunity of producing the same before the Trial Court. . . . "

I am of the view that the petitioners have not satisfied with the mandatory requirements and in the light of the judgment referred supra, there is no merits in this revision. In fine, this revision is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.01.2015

sms

To

The Subordinate Judge's Court,
Tiruchengode, Namakkal District.

K.KALYANASUNDARAM,J.

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