



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.02.2015

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

CRP (MD) .No.172 of 2015

and

M.P. (MD) .No. 1 of 2015

1. Natchimuthu Gounder

2. Rajamani

: Petitioners

Vs.

V. Karuppasamy

: Respondent

PRAYER: This Civil Revision Petition is praying to set aside the order passed by the learned District Munsif, Oddanchadthiram dated 26.11.2014 in I.A.No.533 of 2014 in O.S.No.167 of 2009 and allow this Civil Revision Petition.

For Petitioner : Mr. S.Karthik

ORDER

The Civil Revision Petition is filed against the order dismissing the application to appoint Commissioner in the suit for declaration and permanent injunction.

2. The suit is filed in the year 2009 and at the instance of the plaintiffs I.A.No.547 of 2009 was filed to appoint a Commissioner and one K.Saravanamuthu was appointed as a Commissioner. The said Commissioner had issued notice to both parties several times and gave opportunities to both parties to appear and co-operate with the execution of the warrant of Commissioner. Despite several adjournments and the request made by the Commissioner, directing the plaintiffs and their advocate to co-operate with him in execution of the warrant, there was no response. Hence, narrating the same the Commissioner had filed a memo on 02.08.2010 before the District Munsif Court. Later, the suit was dismissed for default and subsequently, it was restored on 18.02.2011. Now, after the restoration of the suit, trial has been commenced and the evidence of both plaintiffs and the defendant are over. At this juncture, the present Interlocutory Application has been filed for appointing of Commissioner.



3. The District Munsif has specifically mentioned in the order impugned that at the instance of the plaintiffs the Commissioner has been appointed earlier and the plaintiffs had not co-operated with him. Therefore, the Commissioner was allowed to file a detailed report. Thereafter, till such time no efforts have been taken by the plaintiffs and after the evidence was over and the suit was posted for arguments, the present application is filed for appointing a Commissioner for the second time which is not maintainable.

4. On the above said grounds the application was dismissed by the learned District Munsif, Ootanchathram. Despite the fact that the earlier Commissioner was appointed, for the reasons best known to the plaintiffs they had not persuaded the same. Besides, the suit was dismissed for default and subsequently restored. Even after the restoration of the suit, the appointment of Commissioner was not asked for by the petitioners herein, at the earliest. Further, he cannot ask for appointment of a second Commissioner in a same suit.

5. The present application is filed, after evidence is over. From the conduct of the petitioners it is clear that they cannot have any indulgence from this Court besides without scrapping the entire Commissioner's report, the second application is not maintainable.

6. In such circumstances I am of the view that the trial Court has rightly considered all the aspects in the application and dismissed the same. Hence, the order passed by the trial Court does not warrant any interference and therefore, the revision is dismissed, after confirming the fair and decreetal order passed by the learned District Munsif, Oddanchadthiram dated 26.11.2014 in I.A.No.533 of 2014 in O.S.No.167 of 2009. Consequently connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(Per.Admn.)

/True Copy/

Sub-Assistant Registrar

To

The District Munsif, Oddanchadthiram.

CRP(MD).No.172 of 2015
and M.P.(MD).No. 1 of 2015
04.02.2015