



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.03.2015

CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (MD) .No.367 of 2015 (PD)

and

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

P.L.Muthuraman @ Solai

... Revision Petitioner

vs.

S.Manickam (Died)

S.Chinthamani Achi (Died)

M.M.Sundaram Chettiar

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 17.10.2014 made in I.A.No.211 of 2014 in O.S.No.2 of 2004 on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

For Petitioner : Mr.G.Sridharan

O R D E R

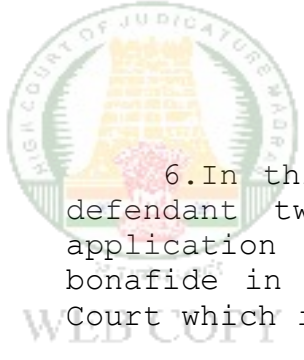
The third defendant has preferred the revision seeking for an appointment of Advocate Commissioner for the second time to measure the property with the help of surveyor, which was dismissed by the trial Court.

2.Earlier an application was filed in I.A.No.55 of 2005 and an Advocate Commissioner was appointed, who had also filed his report and plan. As a matter of fact, the petitioner filed I.A.Nos.221 and 222 of 2007 to scrap the said report and plan and to appoint a new Advocate Commissioner. These applications were also negatived and confirmed by this Court. In the mean while, after commencement of trial, P.W.1 was examined and cross-examination was also over.

3.At this juncture, the present application was filed contending that the report of the Commissioner lacks clarity.

4.Heard the learned counsel appearing for the petitioner.

5.No doubt under Order 26 Rule 10(3) of C.P.C, the trial Court has got the discretion to order for fresh commissioner or not. But, the Court is not bound to do so in every case where the result of the local investigation is found to be unsatisfactory. Where the trial Court is dissatisfied with the proceedings of the commissioner that it thinks it better to discard the whole and start afresh it may do so. Even if the commissioner has misconceived his duties to render his report valueless, it may be wiped out or to be superseded by a fresh report by a fresh order to that effect and it is open to the Court to scrap the report and appoint a fresh commissioner.



6. In this case, already the exercise has been taken up by the third defendant twice, which is also confirmed by this Court. The present application is filed only to drag on the proceedings and there is no bonafide in the same. Therefore, the petition was dismissed by the trial Court which is correct and warrants no interference.

With the above observation, the civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The District Munsif
cum Judicial Magistrate,
Thirumayam.

+1cc to M/S.G.Sridharan, Advocate in SR.No. 9857

TS/18.03.2015/2P-3C

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