



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.03.2015
CORAM:

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

C.R.P. (MD) .No.655 of 2015 (PD)
and
M.P. (MD) .No.1 of 2015

1.Beerbath
2.Mydeen Pitchai ... Revision Petitioners/Petitioner/Defendant

vs.

Jaffer Sadiq ... Respondent/Respondent/Plaintiff

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.344 of 2014 in O.S.No.156 of 2011 on the file of the District Munsif Court, Palani dated 07.01.2015.

For Petitioner : Mr.D.Venkatesh

O R D E R

The defendants in the suit are the revision petitioners, who have challenged the order refusing to reissue the same commissioner, who was appointed earlier in the proceedings.

2.In I.A.No.768 of 2014 after hearing the both sides, the trial Court appointed the Commissioner on 05.01.2012 and he also visited the suit property and submitted his report. No objection was filed by the revision petitioners to the report.

3.The only contention of the revision petitioners is that they were not present at the time of the commissioner's visit and his Advocate also could not be present. Therefore, he could not instruct the commissioner on that day. Therefore, the revision petitioners want the re-issuance of the same commissioner. Though the report of the commissioner has been filed even as early as 2012, the revision petitioners have not filed their objections or pointed out any defects in the report. However, he has filed an application for re-issuance of the same commissioner.

4.The report of the commissioner is only a piece of evidence and it is not binding on the Court. During the course of the trial, if the Court finds that the report of the first Commissioner is not in accordance with the instructions given, it is open to the Court to re-issue the Commissioner. Merely, because the report is unsatisfactory, the same cannot be reissued on that ground.

5. In such circumstances, the trial Court has correctly dismissed the application, which does not warrant any interference by this Court.



6.In the result, the civil revision petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

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Sub Assistant Registrar

To

The District Munsif Court, Palani.

+1cc to MR.D.VENKATESH, ADVOCATE SR.NO. 15687

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