



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.01.2015

CORAM:

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P. (NPD) (MD) No.79 of 2015

and

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

1.V.Paramadas

2.K.Sivadhanu Pillai

3.C.Raveendran

4.P.Sakthitharan

5.P.Sasthavoo

: Petitioners/Petitioners/Appellants

Vs.

1.Krishnavaka Educational Trust,
Represented by its President
Dwaraka, Kalliancaudu, Nagercoil 2,
Kanyakumari District.

2.S.Marthanda Pillai

3.Dr.K.Padmadas

4.V.Moniokendeswarakumar

(Respondents 2 and 3 were set ex-parte before
the Court below)

: Respondents/Respondents/Respondents

Prayer: Civil Revision Petition is filed under Section 115 of C.P.C, against the fair and decretal order dated 21.11.2014 passed in I.A.No.115 of 2014 in A.S.No.1 of 2014 on the file of the Principal Sub-Court, Nagercoil.

For Petitioners : Mr.V.Meenakshisundaram

ORDER

The plaintiffs, who filed the suit for declaration that they are the shareholders in the first defendant Trust, has filed the above revision challenging the order refusing to appoint a Commissioner.

2. The suit filed by the plaintiffs was dismissed. Hence, appeal in A.S.No.1 of 2014 was filed before the Principal Sub-Judge, Nagarcoil. In the said appeal, the application to appoint a Commissioner was filed by the petitioners for the purpose of identifying and locating the properties scheduled in the exchange deed, dated 29.08.2005. The said application was dismissed by the Sub-Court, Nagercoil. Aggrieved by the same, the above revision is filed.



3. Heard the learned counsel for the petitioner.

4. Under Order 26 Rule 9, the Court though has got discretion to appoint a Commissioner, the Court is not bound to do so in every case. In the case on hand, the petitioners have not made out how the result of the local investigation would help the proper adjudication of the appeal. The plaintiffs are not bonafide in filing the application at the appellate stage as they did not file the same before the trial Court and having got the suit dismissed, to gather evidence, the plaintiffs cannot be permitted to file this application under Order 26 Rule 9 C.P.C. If the appellate Court is unable to come to a conclusion in adjudicating the matter in its proper perspective, it is always open to the Court to issue commission for the purpose, which may be required. Besides, the report of the Commissioner is not binding on the Court. Hence, there is no necessity to appoint a Commissioner at the appellate stage. There is no merit in the submission of the learned counsel for the petitioner. Therefore, there is no reason to interfere in the order of the trial Court.

5. In the result, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed. No costs.

Sd/-

Assistant Registrar(T&P)

/True copy/

sub Assistant Registrar

pm

To

The Principal Sub-Judge,
Nagercoil.

+1cc to MR.D.NALL THAMBI,ADVOCATE IN SR NO.2770

Order made in
C.R.P. (NPD) (MD) No.79 of 2015
21.01.2015

RG.25.02.2015 2P.3C.