

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD) No.2262 of 2015 &

M.P.No.1 of 2015

1.K.Chinna Marudhachalam  
2.C.Easwaramurthy

... Petitioners

v.

1.R.Venkatachalam  
2.R.Narayanasamy  
3.Subbathal

4.Tamil Nadu Electricity Board  
Rep. By its Superintending Engineering  
Office at Tatabad  
Coimbatore -12.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 12.02.2014 made in I.A.No.198 of 2014 in A.S.No.8 of 2004 on the file of III Additional Subordinate Judge, Coimbatore.

For Petitioner : Mr.Venkatachalapathy, Sr. Counsel  
Mr.M.Sriram

O R D E R

Challenging the fair and final order passed in I.A.No.198 of 2014 in A.S.No.8 of 2004 on the file of III Additional Subordinate Court, Coimbatore, the plaintiffs in O.S.No.228 of 1995 on the file of II Additional District Munsif Court, Coimbatore, have filed the above Civil Revision Petition.

2. The plaintiffs filed the suit in O.S.No.228 of 1995 for permanent injunction.

3. After contest, the suit was dismissed by the Trial Court.

4. Aggrieved over the same, the plaintiffs filed an appeal in A.S.No.8 of 2004 on the file of III Additional Subordinate Court, Coimbatore. In the said appeal, the plaintiffs took out an application in I.A.No.198 of 2014 seeking for appointment of an Advocate Commissioner to note down the physical features with the assistance of a Surveyor. The defendants filed their counter stating that already an Advocate Commissioner was appointed before the Trial Court, which were marked as Exs.C1 and C2 in the suit in

O.S.No.228 of 1995. Further, the defendants have stated that the Trial Court, taking into consideration, the Advocate Commissioner's report and the plan, dismissed the suit. Thereafter, before the Lower Appellate Court, another application in I.A.No.198 of 2014 has been filed by the plaintiffs seeking for appointment of Advocate Commissioner.

5. It is pertinent to note that earlier an application in I.A.No.502 of 1999 was filed in the connected suit in O.S.No.1902 of 1997 seeking for re-issuance of warrant of commission to the same Commissioner. The Trial Court, allowed the application. Against which, the revision petitioners filed a Civil Revision Petition in C.R.P.No.3500 of 1999 before this court and this court, by order dated 14.10.1999, allowed the Civil Revision Petition and set aside the order passed in I.A.No.502 of 1999.

6. It is pertinent to note that the suits in O.S.No.228 of 1995 and O.S.No.1902 of 1997 were tried together and disposed of by common judgment dated 1.3.2004.

7. When the revision petitioners themselves have challenged the re-issuance of warrant of commission and got the order set aside by this court, now they cannot seek for appointment of an Advocate Commissioner for the second time. When the commissioner's report and the documents are available before the Trial Court as well as before the Lower Appellate

Court, the 2<sup>nd</sup> Advocate Commissioner cannot be appointed. If a 2<sup>nd</sup> Commissioner is appointed, there will be conflict of opinion by the Commissioners. Unless the earlier Advocate Commissioner's report is scraped, 2<sup>nd</sup> Advocate commissioner cannot be appointed. The Lower Appellate Court, taking into consideration all these aspects, has rightly dismissed the application.

8. In these circumstances, I do not find any error or irregularity in the order passed by the Lower Appellate Court. The Civil Revision Petition is devoid of merits and is liable to be dismissed. Mr.Venkatachalapathy, learned Senior Counsel appearing for the petitioners submitted that liberty may be given to the petitioners to file their objections to the Advocate Commissioner's report and the Lower Appellate Court may be directed to consider the same. In view of the submission made by the learned Senior counsel, it is open to the petitioners to file their objections before the Lower Appellate Court, to the report of the Advocate Commissioner marked as Exs.C1 and C2 and the Lower Appellate Court shall also give an opportunity to the respondents-defendants to file their objections also and after considering the objections to be filed by both the parties, the Lower Appellate Court, shall decide the matter on merits and in accordance with law.

With these observations, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.06.2016

Index : Yes/No

Rj

To

The II Additional Subordinate Court,  
Coimbatore.

M. DURAISWAMY,J.,

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