

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-01-2016

(Orders reserved on 17.12.2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

C.R.P.(PD).No.2158 of 2013
& M.P.No.1 of 2013

1. Thirumurthy
2. Rajamani
3. Sukumar
Petitioners

..

Vs.

Mainu Basha

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 28.02.2013 in I.A.No.24 of 2013 in O.S.No.651 of 2007 on the file of the Principal District Munsif Court, Erode.

For petitioners : Mr.M.Guruprasad

For respondent : Mr.A.K.Kumarasamy

ORDER

This Civil Revision Petition is filed against the order dated 28.02.2013 in I.A.No.24 of 2013 in O.S.No.651 of 2007 passed by the learned Principal District Munsif Erode, in and by which, the request of the petitioners/defendants to order re-visit of the learned Advocate Commissioner under Order 26 Rule 9 CPC, was rejected.

2. Learned counsel for the revision petitioners/defendants contended that

the trial Court failed to appreciate and clear the ambiguity and resolve the facts that are in issue by assisting the Court. He further contended that there is discrepancy in the Commissioner's report and both parties have filed their respective objections. In the above circumstances, ordering re-visit of the learned Advocate Commissioner is necessary. He further submitted that the trial Court erred in dismissing the application and the same may be set aside by allowing the Civil Revision Petition.

3. Learned counsel for the respondent/plaintiff contended that the trial Court correctly appreciated the facts and circumstances of the case and the application was filed only to delay and drag on the proceedings and hence, he prayed that the Civil Revision Petition may be dismissed.

4. Heard the learned counsel for the parties and perused the materials available on record.

5. Admittedly, the learned Advocate Commissioner, after giving notice to the parties, visited the suit properties and filed a report. Both parties filed objections to the said report. It is further admitted that the suit is in the stage of trial. It is alleged that there is discrepancy in the said report. Moreover, the Commissioner inspected the properties long ago, i.e. before five years, i.e. on 23.08.2008. The present application is filed to order re-visit of the learned Advocate Commissioner, only after lapse of five years, i.e. on 03.01.2013. In the above circumstances, if there is any objection, both the parties are entitled to adduce evidence regarding the above discrepancy and point out their respective

objections. There is no necessity to order re-visit of the learned Advocate Commissioner. The trial Court is correct in rejecting the application filed to order re-visit of the learned Advocate Commissioner, after a lapse of five years. There is no illegality or infirmity in the impugned order of the trial Court and the same does not warrant any interference by this Court. The Civil Revision Petition is liable to be dismissed.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. The Miscellaneous Petition is closed.

05-01-2016

Index: Yes/no

Internet: Yes/no

cs

Copy to

The Principal District Munsif, Erode.

G.CHOCKALINGAM,J

CS

Order

in

C.R.P.(PD).No.2158 of 2013

05-01-2016