

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.3841 of 2016

and

C.M.P.No.19576 of 2016

1. Eswaramoorthy
2. Nandhakumar
3. Gnanasekar

... Petitioners

vs

1. Paniampalli Village Panchayat
Chennimalai
Perundurai Taluk,
Erode District.

2. Senthilkumar

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 21.03.2016 made in I.A.No.463 of 2014 in O.S.No.127 of 2007 on the file of the learned District Munsif-cum-Judicial Magistrate, Perundurai.

For Petitioner : Mr.N.Manokaran

ORDER

The order refusing to re-issue the warrant of the same Commissioner is under challenge in the above revision.

2. The petitioners/plaintiffs filed a suit for mandatory injunction and permanent injunction against the respondents/defendants. During the cross examination of P.W.1, the respondents/defendants had suggested that the petitioners/plaintiffs have not taken any efforts to measure the suit properties through the Commissioner. Therefore, to prove the existence of the suit properties and that the petitioners/plaintiffs have not made any encroachments, the petitioners/plaintiffs had sought for appointing the same Commissioner, who was appointed earlier to measure the properties with the help of the Taluk Surveyor. The said application in I.A.No.463 of 2014 in O.S.No.127 of 2007 was rightly dismissed by the learned District Munsif-cum-Judicial Magistrate, Perundurai.

4. Already in I.A.No.536 of 2007, an Advocate Commissioner was appointed, who had also filed his report and plan along with the

measurement of the suit properties. However, the defendants have denied the title of the plaintiffs to the suit properties. When after P.W.1 evidence is over, to fill up the lacunae, the plaintiffs have come forward with this petition to prove that they have not many any encroachments.

5. As stated earlier, already a Commissioner was appointed and the report has been filed, which itself is comprehensive. Another Commissioner cannot be appointed unless the Court is dissatisfied with the earlier report. It is an unhealthy practice to repeat appointment of Commissioner or re-issue the same Commissioner, When the earlier Commissioner's report is also not objected to and the same is on record, re-issuing the warrant to the same Commissioner is not justified. Therefore, I find no reason to interfere with the same.

6. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

PUSHPA SATHYANARAYANA.J

srn

To

The District Munsif-cum-Judicial Magistrate,
Perundurai.

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