



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 10.11.2016
CORAM

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

WEB COPY

C.R.P. (MD) No. 1910 of 2016
and
C.M.P. (MD) Nos. 9068 & 10359 of 2016

1. A. Thesaimani
2. A. Narayanasamy

.. Petitioners/Respondents/
Plaintiffs

Vs.

1. M. Maniyakodi
2. Boomirajan
3. B. Indurani

.. Respondents/Petitioners/
Defendants

PRAYER: Petition filed under Article 227 of Constitution of India, to call for the records relating to the fair and decreetal order dated 22.07.2016 made in I.A.No.290 of 2014 in O.S.No.64 of 2014 on the file of the learned District Munsif, Theni and to set aside the same and to allow the Civil Revision petition.

For Petitioners : Mr. V. Janakiramulu
For Respondents : Mr. P. Arun Jeyatram

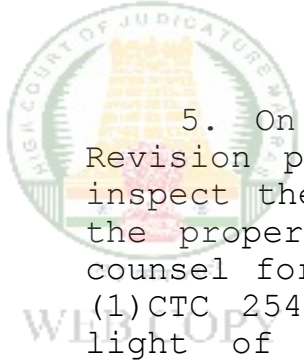
ORDER

This Civil Revision petition arises out of the order passed by the learned District Munsif, Theni, in I.A.No.290 of 2014 in O.S.No.64 of 2014, dated 22.07.2016.

2. Heard the learned counsel for the petitioners as well as the respondents.

3. The learned counsel for the petitioners would submit that the petitioners filed the aforesaid suit for permanent injunction. Therefore, there is no necessity for appointment of an Advocate Commissioner for collecting the materials to prove the possession of the suit property.

4. On perusal of records, it is seen that the respondents/defendants filed the present application in I.A.No. 290 of 2014 to appoint an Advocate Commissioner with a surveyor to survey and measure the suit property. The present application was allowed by the Court below, for the reason that the suit property can be identified and measured on the basis of the document so as to determine the real issues involved in the aforesaid suit.



5. On the other hand, no prejudice would be caused to the Revision petitioner, if an Advocate Commissioner is appointed to inspect the suit property for the purpose of the identification of the property on the basis of the document. Further, the learned counsel for the respondents submitted the Judgment reported in 2014 (1)CTC 254, (Muthu Jayanthi V. C.L.Mahadevan). Hence, in the light of the above Judgment, the appointment of an Advocate Commissioner with Surveyor is necessary to decide the real issues involved in the suit property. However, during the course of the argument, the learned counsel for the petitioner would submit that this Court may accept the appointment of an Advocate Commissioner that the Advocate Commissioner shall inspect the suit property along with the District Surveyor instead of Taluk Surveyor as ordered by the Court below. The learned counsel for the petitioner would have no serious objection with the appointment of an Advocate Commissioner with District Surveyor, as prayed in the present application.

6. Considering the facts and circumstances of the case, this Court is not inclined to interfere with the order passed by the Court below. However, the order of the Court below is modified to the extent that an Advocate Commissioner shall be appointed to measure the suit property with the help of the District Surveyor and submit the report as directed by the learned District Munsif, Theni, in I.A.No.290 of 2014 in O.S.No.64 of 2014.

7. The Civil Revision petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Record)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Theni.

+1cc to Mr.V.Janaki Ramulu, Advocate, SR No 68562

pmu

ms/rr/me/20.01.2017/2p.3c

ORDER MADE IN
C.R.P. (MD) No.1910 of 2016

and
C.M.P. (MD) Nos. 9068 & 10359 of 2016
10.11.2016