



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P(MD)No.2608 of 2016 (PD)

and

C.M.P(MD)No.12314 of 2016

1.V.K.Rajendran
2.V.P.Jegadheesh
3.K.Nagarajan

... Revision Petitioners/
Petitioners/Plaintiffs

Vs.

M.SathiyamoorthyRespondent/Respondent/Defendant

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.749 of 2016 in O.S.No.464 of 2009, dated 08.12.2016, on the file of the Principal District Munsif, Karur.

For Petitioners : Mr.E.K.Kumaresan

ORDER

The petitioner has filed this Civil Revision Petition against the fair and decreetal order passed in I.A.No.749 of 2016 in O.S.No.464 of 2009, dated 08.12.2016, by the Principal District Munsif, Karur.

2.The petitioners are the defendants 9 to 11 and respondent is the plaintiff in O.S.No.464 of 2009. The respondent filed a suit in O.S.No.464 of 2009 for declaration, Mandatory Injunction and for Permanent Injunction. The petitioners filed I.A.No.749 of 2016 for re-issue of warrant of Advocate Commissioner on the ground that originally an Advocate Commissioner was appointed in I.A.No.758 of 2009 and no notice was given to the then defendants. Subsequently, the petitioners are impleaded as defendants 9 to 11 by filing I.A.No.308 of 2011 as defendants. Only, now the petitioners came to know that the Advocate Commissioner inspected the suit property and filed his report without notice to the defendants. The earlier Advocate Commissioner appointed in I.A.No.758 of 2009 became a Judge and therefore, they prayed for



appointment of another Advocate Commissioner and stated that the petitioners will co-operate in conducting the trial on day today basis without any further delay.

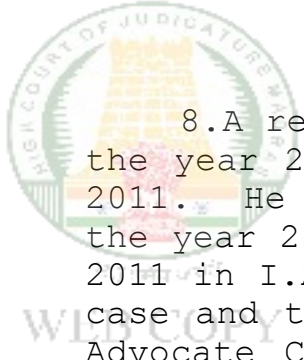
3. The respondent filed counter affidavit and submitted that the petitioners filed O.S.No.143 of 2011 against the respondent and others. In the said suit, the petitioners filed I.A.No.226 of 2011 and obtained an interim injunction and subsequently, the same was decreed. In the said suit in I.A.No.226 of 2011 the report of the Advocate Commissioner was marked as Ex.B4 in the year 2011 itself and the petitioners were aware of the Advocate Commissioner's Report. Therefore, the contention of the petitioners that they came to know about the report of the Advocate Commissioner only now, that Advocate Commissioner without notice to the defendants inspected the property and filed the report, is not correct. The petitioners were impleaded in I.A.No.308 of 2011 in the year 2011 itself and they did not file any written statement and an ex-parte decree was passed on 31.10.2013. Subsequently, they filed I.A.No.414 of 2016 and 415 of 2016 to condone the delay in filing the petition to set aside the ex-parte decree and to set aside ex-parte decree. The ex-parte decree was set aside on payment of cost in the year 2016 and prayed for dismissal of the petition.

4. The learned Judge considering the averments made in the affidavit and counter affidavit and materials available on record, dismissed the application holding that the suit is of the year 2009, the petitioners were impleaded as party defendants in the year 2011, they were set ex-parte on 31.10.2011 and subsequently the said ex-parte decree was set aside on 07.06.2016 on payment of cost and application filed by the petitioners for appointment of Advocate Commissioner is not maintainable and petitioners must prove their case by oral and documentary evidence and cannot be permitted to collect the evidence to substantiate their case.

5. Against the said order of dismissal, the petitioners have filed the present Civil Revision Petition.

6. The learned counsel for the petitioners submitted that the learned Judge failed to see that the Advocate Commissioner was appointed earlier and he inspected the suit property without any notice to the then defendants and without help of Village Administrative Officer to identify the properties and the Advocate Commissioner has not properly note down the physical features of the suit property. The learned Judge failed to see that the petitioners have given an undertaking that they will co-operate in conducting the trial on day today basis.

7. The learned Judge heard the learned counsel appearing for the petitioner and also perused the entire materials on record.



8.A reading of materials, it is seen that the suit is filed in the year 2009 and Advocate Commissioner was appointed in the year 2011. He inspected the suit property and he filed his report in the year 2011. The petitioners impleaded as defendants in the year 2011 in I.A.No.308 of 2011. Subsequently, they did not contest the case and they were set ex-parte. Averments of the respondent that Advocate Commissioner's report was marked as Ex.B4 in I.A.No.226 of 2011 in O.S.143 of 2011 filed by the petitioners. The said report was filed in the year 2011. This fact was not disputed by the petitioners. Therefore, it is clear that the petitioners were aware of the report of the Advocate Commissioner in the year 2011 itself, but they filed application for re-issue of warrant of Advocate Commissioner in the year 2016. It is also pertinent to note that the petitioners after being impleaded as party defendants, they were set ex-parte. Subsequently, on filing the petition in the year 2016, an ex-parte order was set aside. The learned Judge has considered all the facts and materials on record concluded that, it is for the petitioners to prove their case as stated in the written statement by oral and documentary evidence and petitioners cannot be permitted to collect evidence through Advocate Commissioner to substantiate their case. In the circumstances, the learned Judge has exercised his jurisdiction in proper perspective and there is no illegality or irregularity warranting interference by this Court.

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

Sd/-

Assistant Registrar(Record)

/True copy/

Sub Assistant Registrar

To

The Principal District Munsif,
Karur.

Am

AE/CM-MSA/09.02.2017 :3P/2C

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