



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
DATED :24.02.2016  
CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (PD) (MD) Nos.419 & 420 of 2016  
and

C.M.P (MD) No.1825 of 2016 in  
CRP. (MD) .NO.419 of 2016

1.Mrs.A.Janaki  
2.R.Babu  
3.R.Jawahar  
4.R.Dinesh Kumar

.. Petitioners/Plaintiffs/Petitioners  
in both the C.R.Ps.

Vs.

1.Y.Gopi  
2.S.Rani

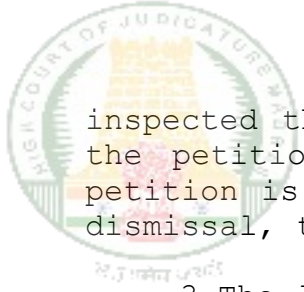
.. Respondents/Defendants/Respondents  
in both the C.R.Ps.

Common Prayer: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the order and decreetal order, dated 12.10.2015 of the learned Principal District Munsif, Nagercoil, made in I.A.No.776 and 777 of 2015 in O.S.No.35 of 2014 .

For Petitioners : Mr.K.N.Thampi  
For Respondents :Mr.C.Christopher

#### COMMON ORDER

The petitioners in both the CRPs are the plaintiffs in O.S.No.35 of 2014 and the respondents are the defendants. The petitioners filed suit for declaration, permanent injunction and for mandatory injunction against the respondents. In the said suit, the respondents have filed written statement and contesting the matter. Pending suit, the petitioners filed an application for appointment of Advocate Commissioner. The said application was ordered appointing an Advocate Commissioner to note down the physical features. The Advocate Commissioner inspected the property and filed his report. The petitioners filed two applications in I.A.No.776 and 777 of 2015 for re-open the case to re-issue the warrant of commission on the ground that the Advocate Commissioner did not measure the property in possession of the 4<sup>th</sup> plaintiff and defendant. The respondents filed counter affidavit stating that the petitioner already filed an application for injunction restraining the respondents. Taking advantage of the injunction order in their favour they are harassing the respondents. The petitioners previously filed I.A.Nos.748 and 749 of 2015 to re-open and call for the records. Now, after completion of the arguments, the petitioners have come out with the present petition only to drag on the proceedings. The petitioners have not filed any objection to the report of the Advocate Commissioner and therefore, prayed for dismissal of the I.A.



inspected the property and filed his report as per the points raised by the petitioner. The suit is posted for arguments. At that stage, the petition is not maintainable and rejected the same. Against the order of dismissal, the petitioners have filed this Revisions.

3.The learned counsel for the petitioners contended that the learned Judge erred in holding that the Advocate Commissioner considered all the points raised by the petitioners in application and filed his report. The learned Judge failed to see that the Advocate Commissioner has not measured the property in possession of 4<sup>th</sup> plaintiff and defendants.

4.The learned counsel for the caveator submitted that the petitioners did not file any objection to the Advocate Commissioner and therefore, the petitioners are not entitled to maintain the application for re-issue of warrant. In support of his contention, the learned counsel for the respondents relied on the Judgment reported in **2014 (1) MWN (Civil) 234 (Sadaiyan vs. Ravi and another)**.

5. Heard Mr.K.N.Thambi, learned counsel appearing for the petitioners and Mr.C.Christopher, learned counsel appearing for the respondents and I have carefully considered all the materials on record.

6.From the records, it is seen that the suit is posted for arguments of the parties. The petitioners took time for arguments and at that stage, the petitioners have come out with the applications for re-open and to re-issue of commissioner warrant only to drag on the proceedings. The learned Judge considering the report of the Advocate Commissioner and held that the Advocate Commissioner filed his report after taking note of the points raised by the petitioners in their petitions. The petitioners did not deny the averments that they are filed objections to commissioners report. The applications are belated and are devoid of merits. The learned Judge considering all these facts dismissed the application by giving valid and cogent reasons and there is no reason warranting interference by this Court.

8.In the result, the Civil Revision Petitions are dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(R)

/True copy/

Sub AssistantRegistrar

To

The Principal District Munsif,  
Nagercoil.

+1cc to M/s.K.N.Thambi, Advocate in SR.No.10712

+1cc to M/s.C.Christopher Advocate in SR.No.11082