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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2016

CORAM

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

C.R.P. (MD) .No.578 of 2016 (PD)

and

C.M.P. (MD) .No.2538 of 2016

1.S.Venkatesh

2.L.Ponpandi

... Petitioners/Petitioners/Respondents

Vs.

1.Prama Sakthivel

2.Chinnadurai

3.Lakshmi

4.Marriammal

5.Uma Parvathi

6.Kandasamy Asari

... Respondents/Respondents/Plaintiffs

Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 10.12.2015 in I.A.No.1088 of 2015 in O.S.No.101 of 2010 on the file of the District Munsif Court, Srivaikundam.

For Petitioners

:Mr.G.Prabhurajadurai

**ORDER**

This civil revision petition has been filed to set aside the decreetal order dated 10.12.2015 passed in I.A.No.1088 of 2015 in O.S.No.101 of 2010 by the District Munsif, Srivaikundam.

2.The petitioners are the defendants in the suit in O.S.No.101 of 2010. The respondents filed a suit for declaration and injunction. The respondents filed I.A.No.409 of 2011 for appointment of an Advocate Commissioner. The said application was allowed on 20.09.2011 and the Commissioner was appointed. As per the order, the Advocate Commissioner visited the suit schedule property on 07.12.2013 and filed his report on 23.01.2014. The petitioners did not file any objection within the time limit. But, the petitioners have filed objection after 1 year 6 months and 25 days. The petitioners objected the Commissioner's report with



regard to the S.No.412/B4, 412/B15 and 412/B12. Trial commenced. The respondents completed the evidence. D.W.1 and D.W.2 were examined and cross-examined. At that time, the petitioners filed I.A.No.1088 of 2015 for reissuing the warrant of commission on the ground that the Advocate Commissioner and Surveyor did not measure the entire land, but measured the land which according to the respondents is sub-divided. There is difference in the particulars furnished by the respondents and in the revenue records. Therefore, only after measuring the entire land, the sub-division can be made.

3.The respondents filed counter affidavit and opposed the same. The respondents stated that D.W.2 in the cross-examination has admitted the Sub-division and stated that nobody objected for sub-division. The objections raised by the petitioners relates to property, which is not suit property. Only to prolong the issue, the petitioners have filed I.A.No.1088 of 2015 for reissuing the warrant of commission.

4.The learned Judge considered all the facts and materials on record, dismissed the application. Against the said order of dismissal, the present civil revision petition is filed.

5.The learned counsel for the petitioners submitted that the learned Judge erred in dismissing the application stating that it has been filed belatedly. The learned Judge failed to consider the grievance of the petitioners as mentioned in the objection to the Commissioner's report. The learned Judge failed to consider the grievance of the petitioner that the Advocate Commissioner and surveyor did not properly measure the entire property. The learned Judge erred in dismissing the application on the ground that the burden of proof is on the respondents/plaintiffs, as it is for the plaintiffs to prove and substantiate their case.

6.I have heard Mr.G.Prabhurajadurai, learned counsel appearing for the petitioner and carefully perused the entire materials on record.

7.It is seen that the application for re-issuance of warrant of commission was filed long after the Commissioner has filed the report and during the pendency of the trial, after completion of D.W.2's cross-examination. The petitioners also filed objection to the Commissioner's Report, after a considerable delay. The learned Judge rightly held that it is for the respondents/plaintiffs to prove their case. Further, the respondents have stated that the property mentioned by the petitioners is not a suit property. Considering all these circumstances, the learned Judge has dismissed the application. There is no infirmity or illegality, warranting interference by this Court.



In the result, the civil revision petition is dismissed. No costs. Consequently, the connected C.M.P is also closed.

Sd/-

Assistant Registrar(T & P)

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/True Copy/

Sub Assistant Registrar

To

The District Munsif Court,  
Srivaikundam.

+1cc to Mr.G.Prabhu Rajadurai, Advocate Sr.No.14319

ns

AA/SKS-RR/28.04.2016/3p-3c

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