

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1180 of 2017
& C.M.P.No.5614 of 2017

1. Rangasamy
2. Mathiyan
3. Sanmugavel

.. Petitioners

Vs.

Muthunayakkar @ Muthusamy

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 26.08.2016 in I.A.No.205 of 2016 in O.S.No.131 of 2014 on the file of the learned District Munsif, Rasipuram.

For Petitioners : Mr.A.Jenasenan

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 26.08.2016 in I.A.No.205 of 2016 in O.S.No.131 of 2014 on the file of the learned District Munsif, Rasipuram.

2. The petitioners are the defendants and respondent is the plaintiff in O.S.No.131 of 2014. The respondent filed the suit for the relief of declaration and permanent injunction. The petitioners filed written statement on 08.01.2015. The petitioners filed an application in I.A.No.709 of 2014 for appointment of an Advocate Commissioner to inspect the suit property and also to inspect the pathway comprised in S.Nos.62/8A, 62/8B, 61 and 62 and file a report. Subsequently, the Advocate Commissioner was appointed and he inspected the suit property and filed his report. The petitioners filed objections to the report and subsequently, the said application was closed. The petitioners filed I.A.No.205 of 2016 for re-opening the I.A.No.709 of 2014 and to amend the survey numbers mentioned in the commissioner's report.

3. According to the Petitioners, the Commissioner has given wrong survey numbers and the same is not relevant to the suit property. However, the respondent has made an endorsement in the application in I.A.No.205 of 2016 that he is not filing any counter.

4. The learned Judge considering the averments made in the affidavit and materials available on record, dismissed the application holding that there is no provision to amend the report of the Commissioner and if at all the petitioners are aggrieved with the report of the Advocate Commissioner, they can file an application for re-issuance of warrant of commission.

5. Against the said order dated 26.08.2016 in I.A.No.205 of 2016, the present Civil Revision Petition is filed by the petitioners/defendants.

6. The learned counsel for the petitioners submitted that the learned trial Judge erred in holding that the Court has no power to amend the report of the Advocate Commissioner. In the report of the Advocate Commissioner, the survey number has been wrongly mentioned due to the typographical error. The petitioners are seeking only to correct the typographical error and not seeking any amendment. However, without considering the objection of the petitioners, the learned trial Judge has closed the application. Thus he prayed for allowing this Petition.

7. Heard the learned counsel for the petitioners and perused the materials available on record.

8. The grievance of the petitioners is that in the report of the Advocate Commissioner, due to typographical error, the survey number has been wrongly mentioned and the petitioners would seek correction of the said mistake and they are not seeking any amendment to the report. It is well settled that the report of the Advocate Commissioner is not final for deciding the issue in the suit and the same is only to assist the Court in deciding the issue in the suit. It is for the Court to decide either to object or accept the report of the Advocate commissioner. The petitioners have already filed objection to the Advocate Commissioner's report and it is for the Court to consider, either to accept or to reject the report. The petitioners also have a right to examine the Advocate Commissioner, as a witness.

11. The learned Judge considering all the above aspects dismissed the application by giving cogent and valid reasons. There is no illegality or irregularity in the order passed by the trial Court warranting interference by this Court.

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

02.06.2017

Index : Yes/No

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To

The District Munsif
Rasipuram.

V.M.VELUMANI, J.

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