



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(MD)No.134 of 2017 (PD)

&

C.M.P.(MD)No.443 of 2017

- 1.Sooriah Naickar,  
S/o.Gurusamy Naickar @ Peria Gurusamy Naickar
- 2.Sankaravel, S/o.Sooriah Naickar
- 3.Satheeskumar, S/o.Sooriah Naickar .. Petitioners

Vs.

Subbaiah .. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 02.06.2015, passed in I.A.No.614 of 2014 in O.S.No.79 of 2014, on the file of the District Munsif Court, Virudhunagar.

For Petitioners : Ms.Lakshmi Gopinathan

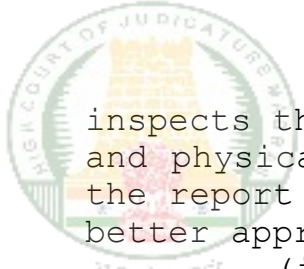
#### ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 02.06.2015, passed in I.A.No.614 of 2014 in O.S.No.79 of 2014, on the file of the District Munsif Court, Virudhunagar.

#### 2. Facts of the case:-

(i) The petitioners are the defendants and the respondent is the plaintiff in the suit in O.S.No.79 of 2014 on the file of the District Munsif Court, Virudhunagar. The respondent filed the suit for permanent injunction restraining the petitioners, their men and agents from in any manner interfering with his peaceful possession and enjoyment of the suit property.

(ii) The first petitioner filed written statement and submitted that the respondent has not given correct survey number, boundaries, description and extent of the property. Hence, they filed I.A.No.614 of 2014 under Order 26 Rule 9 and Section 151 C.P.C., before the District Munsif Court, Virudhunagar, for appointment of Advocate Commissioner, to inspect the suit property along with the help of Village Administrative Officer and Surveyor and to note down the details of survey number, extent, boundaries and other physical features with a plan and to file a report. According to the petitioners, if the Advocate Commissioner along with the help of Surveyor and Village Administrative Officer,



inspects the suit property and filed a report with the above details and physical features, unnecessary oral evidence can be avoided and the report of the Advocate Commissioner will be very helpful for the better appreciation of the main suit.

(iii) The respondent filed counter affidavit and denied the averments made in the affidavit. According to the respondent, he filed the suit for permanent injunction and it is for him to prove his case. The intention of the petitioners is to collect further evidence to prove their case through Advocate Commissioner.

(iv) The learned District Munsif, Virudhunagar, upon considering the averments mentioned in the affidavit and the counter affidavit and also considering the materials available on record, dismissed the application holding that the respondent filed the suit for bare injunction and the petitioners cannot collect evidence through Advocate Commissioner and prove their possession.

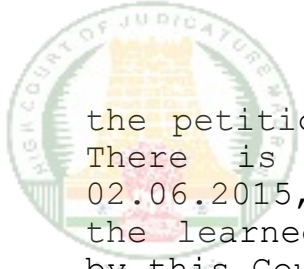
3. Against the said order of dismissal dated 02.06.2015, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel for the petitioners submitted that the learned District Munsif, Virudhunagar, has erred in dismissing the application on the ground that the petitioners have filed the application only to collect evidence, through Advocate Commissioner. The learned District Munsif has dismissed the application for appointment of Advocate Commissioner on an erroneous ground. The learned District Munsif ought to have seen that the respondent/plaintiff has described the property wrongly with incorrect measurements and improper boundaries in the plaint. The appointment of Advocate Commissioner is only to measure the property and verify correct boundaries and description.

5. In support of her submissions, the learned counsel for the petitioners relied on the judgment reported in **2016 (1) LW 159 [Nallamma Naidu Vs. Paul Pandian and another]** and submitted that when there is a dispute with regard to the suit property, an Advocate Commissioner can be appointed.

6. I have considered the submissions of the learned counsel for the petitioners and perused the materials available on record.

7. From the materials available on record, it is seen that the respondent filed the suit for bare injunction against the petitioners. As rightly contended by the learned counsel for the respondent before the learned District Munsif that it is for the respondent to prove and substantiate his case. When the petitioners have disputed the description of the property given by the respondent in the plaint, it is for the respondent to prove that the description of the property as given by him in the plaint is correct. The petitioners cannot collect evidence through Advocate Commissioner to prove their case that the description of the property given by the respondent in the plaint is not correct. In the circumstances, the judgment relied on by the learned counsel for



the petitioner is not applicable to the facts of the present case. There is no irregularity or illegality in the order dated 02.06.2015, passed in I.A.No.614 of 2014 in O.S.No.79 of 2014, by the learned District Munsif, Virudhunagar, warranting interference by this Court.

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

SD  
ASSISTANT REGISTRAR

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

The District Munsif,  
Virudhunagar.

+1 CC TO M/S. LAKSHMI GOPINATHAN, ADVOCATE, SR NO.3718

SMN2

MAS/CM-MSK:08.02.2017:3P/3C

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