



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(PD) (MD)No.1597 of 2011

1) Pappathiammal  
2) Pitchaiyammal  
3) Muthuramalingam  
4) Dhanushkodi

... Petitioners

vs.

1) Soniya  
2) Periyasamy

... Respondents

Petition filed under Article 227 of the Constitution of India, against the impugned order dated 04.07.2017 in I.A.No.157 of 2017 in O.S.No.92/2009 on the file of the Additional District Munsif Court, Aruppukottai.

For Petitioner : Mr.V.Muniasamy  
For Respondent : Mr.V.Sasikumar

ORDER

This revision petition has been filed against the dismissal of I.A.No.157 of 2017 in O.S.No.92/2009 dated 04.07.2017 on the file of the Additional District Munsif Court, Aruppukottai.

2.The case of the petitioner is that their father purchased the suit property vide sale deed dated 17.11.1964. According to them, the property is under survey Nos.75/1, 75/2, but the patta issued to their father contains only survey No.75/1 alone to the extent of 0.23.5 hectares. But, according to them, patta in survey No.75/2 was wrongly made in the name of the defendant during UDR survey and therefore, they prayed for appointment of advocate commissioner to measure the suit property as per the sale deed and as per the revenue records with the assistance of the surveyor.

3.The petitioner would rely on the following judgments:-

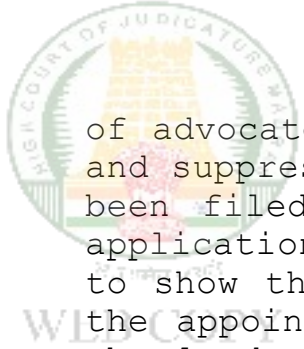
(i) Saraswathy vs. Viswanathan (CRP.No.2352 of 2001 dated 13.03.2002)

(ii) Mathura Prasad Sarjoo Jaiswal and others vs. Dossibai reported in AIR 1971 SC 2355.

(iii) Supreme Court Employees Welfare Association vs. Union of India reported in AIR 1990 SC 334.

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1.The respondents through their counter have stated that the petitioners have already filed I.A.No.604 of 2010 for appointment



of advocate commissioner and the same was dismissed on 15.02.2011 and suppressing the above application, the present application has been filed after a period of nearly six years and the earlier application was dismissed holding that the petitioners are trying to show that they are in possession of the suit property through the appointment of commissioner and the extent and boundaries of the land can be proved by way of documentary and oral evidence. Admittedly, the petitioners have not filed any appeal against the said order.

5.Learned counsel for the petitioners would submit that filing of the second application for appointment of advocate commissioner is not barred by the principles of res judicata.

6.Heard the learned counsel for the petitioners and respondents.

7.In this case, the petitioners have earlier filed an application for appointment of advocate commissioner and an order has been passed on merits and after a period of six years, the petitioners have filed the very same application which in my considered opinion definitely would be barred by the principles of res judicata and the judgment relied on by the petitioner will not be applicable to the present circumstances of the case.

8.Further, perusal of the records shows that earlier application for appointment of advocate commissioner in I.A.No.604 of 2010 was dismissed on merits by order dated 15.02.2011 and perusal of the present application also shows the same facts in which earlier application was filed and decided on merits, against which, no revision was filed and therefore, the present application is an abuse of process of the court and the learned Judge has rightly dismissed the application which does not require interference by this Court.

Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif, Aruppukottai.

+1CC to Mr.V.Munia Samy, Advocate, SR.No. 84337

+1CC to Mr.V.Sasi Kumar, Advocate, SR.No. 84289

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