



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.04.2017

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD)No.804 of 2017

and

CMP(MD)No.3628 of 2017

1.Chidambaram Pillai

2.Meenambal

3.Savithiri

4.Anaikutti

5.Sakunthala

6.Malliga

7.Amaresan

... Petitioners/Respondents/Plaintiff

(Petitioners 1 to 6 are represented by their Power Agent

the 7th respondent herein)

vs.

Mahendran

... Respondent/Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.53 of 2017 in O.S.No.51 of 2013 on the file of District Munsif Cum Judicial Magistrate Court, Natham dated 13.03.2017.

For Petitioner : Mr.N.Rahamadullah

ORDER

The Trial Court has allowed the application filed under Order 26 Rule 9 and Section 151 CPC, for appointment of Advocate Commissioner after examination of plaintiff side witnesses.

2.Aggrrieved by the said order, the plaintiffs have preferred the revision petition on the ground that while the earlier Advocate Commissioner application was allowed and Commissioner has submitted his report as early as in 2014, the present application filed belatedly during the trial itself is not maintainable and furthermore, by filing this application, the defendant is trying to protract the proceedings. Hence, such a request ought not to have been acceded by the Trial Court. Since the Trial Court has not considered the objection for appointing fresh Advocate Commissioner, the order of the Trial Court has to be set aside.



3.The above contention of the revision petitioner is considered and on perusing the impugned order, this Court finds that though the Trial Court earlier appointed an Advocate Commissioner to inspect the disputed property and submit the report, it appears that the report of the Advocate Commissioner is bereft of the details such as, the measurement of the property and more particularly, the measurement of Survey No.215/41 which is the subject matter of the suit has not been measured and measurement of the property has not been furnished by the earlier Advocate Commissioner. Hence, the Trial Court has allowed the second application with the direction to the Commissioner to inspect the suit property and measure the property with the help of Taluk Surveyor and Village Administrative Officer and submit the report.

4.To alleviate the apprehension of the revision petitioner that the trial will be protracted by allowing the Advocate Commissioner application, it is sufficient to direct the Trial Court to fix the date for inspecting the premises and inform the Taluk Surveyor as well as the Village Administrative Officer of that area to be present in the suit premises to carry out the inspection on that day and submit the report within the time fixed by the Trial Court. In any event, such inspection should be completed by 30.06.2017 and thereafter, the Trial Court shall proceed further without any delay.

With the above direction, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Cum Judicial Magistrate,
Natham.

+1 cc to Mr.N.Rahamadullah, Advocate, SR.No. 52686

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