



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.02.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.2463 of 2016 (NPD)
& C.M.P. (MD) No.11612 of 2016

1.Parvathiammal, W/o.Late. Athilingam
2.A.Selvakumar, S/o.Late. Athilingam
3.A.Puthuraja, S/o.Late. Athilingam
4.Devi Selvi, D/o.Late. Athilingam
5.Palani Selvi, D/o.Late. Athilingam
6.A.Chakravarthy, S/o.Late. Athilingam
7.Ponnirulappasamy, S/o.Late. Athilingam .. Petitioners

Vs.

Ananthasubramanian

.. Respondent

PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, against the fair and decreetal order dated 11.01.2016, passed in I.A.No.39 of 2011 in A.S.No.49 of 2009 by the learned Subordinate Judge, Theni.

For Petitioners : Mr.V.Janakiramulu

For Respondent : Mr.T.J.Ebnezer Charles

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 11.01.2016, passed in I.A.No.39 of 2011 in A.S.No.49 of 2009 by the learned Subordinate Judge, Theni.

2. The petitioners are the appellants in A.S.No.49 of 2009 on the file of the Subordinate Court, Theni and plaintiffs 1 and 3 to 8 in O.S.No.194 of 2007 on the file of the District Munsif Court, Theni. The petitioners filed the suit for declaration. The petitioners also filed I.A.No.39 of 2011 in A.S.No.49 of 2009, for appointment of Advocate Commissioner. The said application was allowed on 29.08.2011 and an Advocate Commissioner was appointed. On 11.01.2016, the Advocate Commissioner filed a Memo before the first appellate Court stating that he inspected the property on four occasions and the petitioners did not arrange an Engineer to be present to execute the warrant of Commission. The learned Subordinate Judge, Theni, after recording the fact that the petitioners have not taken any steps to bring an Engineer and no proof was made, closed I.A.No.39 of 2011 on 11.01.2016.



3. Against the said order dated 11.01.2016, the petitioners have come out with the present Civil Revision Petition.

4. The learned counsel for the petitioners submitted that as per the order passed in I.A.No.39 of 2011, P.W.D. Engineer must accompany the Advocate Commissioner to measure the property and to take photographs. He further submitted that the petitioners have already paid necessary Batta. The respondent's relative is an influential person and using his influence, he has prevented the Engineer from visiting the petition premises. He also submitted that the learned Subordinate Judge, has not given any opportunity to the petitioners to put forth their case and closed the application.

5. The learned counsel for the respondent submitted that for measuring the property for more than four years, the petitioners have not taken any steps for the Engineer to accompany the Advocate Commissioner. The learned Subordinate Judge considering the pendency of the application for more than 4 years without any progress, has rightly closed the application and prayed for dismissal of the Civil Revision Petition.

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

7. From the records, it is seen that the petitioners filed the application for appointment of Advocate Commissioner in the year 2011 in the first appeal. The said application was allowed as prayed for on 29.08.2011. The Advocate Commissioner has stated that he inspected the property on four occasions and on all four occasions, the petitioners have not made arrangements for an Engineer to accompany the Advocate Commissioner to execute the warrant of Commission. Recording the Memo filed by the Advocate Commissioner, the learned Subordinate Judge closed I.A.No.39 of 2011. The learned counsel for the petitioners contended that due to influence of the respondent, the Engineer did not accompany the Advocate Commissioner, even though the petitioners paid necessary Batta. The said contention is not acceptable for the reason that the application was pending from the year 2011 to 2016 and the petitioners are not brought to the notice of this Court that due to influence of the respondent, P.W.D. Engineer has not inspected the suit property. The petitioners have not taken any steps for inspection and measurement by any approved qualified Engineer. In the circumstances, the present contention of the learned counsel for the petitioners, does not advance the case of the petitioners. There is no irregularity or illegality in the order passed by the learned Subordinate Judge, warranting interference by this Court.

<https://hccasesearch.org/casesearch/>

8. In the result, this Civil Revision Petition is dismissed.



No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar

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To

The Subordinate Judge,
Theni.

+1cc to M/s V.Janaki Ramulu, Advocate Sr.No. 6749

+1cc to Mr.T.J.Ebenezer Charles, Advocate Sr.No. 6581

JAM/28.02.17 /CM-MSA/3P-4C

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