

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CRP (PD) No.117 of 2018
and
CMP. No.653 of 2018

1.Dhanapal
2.Raji

.. Petitioners

Vs

Rasammal

.. Respondent

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and and decretal order dated 05.12.2017 made in I.A.No.253 of 2016 in O.S.No.13 of 2013 on the file of the District Munsif cum Judicial Magistrate, Pennagaram.

For Petitioners :Mr.V.Sakkarapani

ORDER

The Civil Revision Petition is filed against dismissal order dated 05.12.2017 made in I.A.No.253 of 2016 in O.S.No.13 of 2013 on the file of the learned District Munsif cum Judicial Magistrate, Pennagaram.

2.The learned counsel for the revision petitioners would submit that the respondent has filed the suit in O.S. No.13 of 2013 before the Court below for bare injunction. The aforesaid suit was taken up for trial and the plaintiff's side evidence as well as the defendants' side evidence also concluded. At this stage, I.A. No.253 of 2016 has been filed by the petitioners for appointment of Advocate Commissioner to inspect and submit a report before the Court below. The trial Court has dismissed the said application. Therefore, the present Civil Revision Petition has been filed by the petitioner.

3.According to the learned counsel for the petitioners that the Advocate Commissioner is appointed, no prejudice would be caused to the respondent. In fact, the evidence can be minimized in the aforesaid suit and the Court below has also come to a conclusion to decide the detrimental issues involved in the said suit. Therefore, the order passed by the Court below is liable to be set aside.

4. By considering the facts and submissions made by the learned counsel for the petitioners, the respondent filed the suit for bare

injunction against the petitioners. Admittedly, the plaintiff and defendants side evidence have been concluded and the suit is posted for argument. At this stage, the present application for appointment of Advocate Commissioner would not be entertained by this Court.

5. The application for appointment of Advocate Commissioner cannot be entertained at the belated stage that too at the stage of arguments, if it is allowed, is nothing but collecting the evidence. In the light of the case of *Kandasamy and other Vs. Syed Hashim*, reported in **2013-5-L.W.818** this Court has held as follows:

“It is well settled proposition of law that for the purpose of collecting evidence, no party can invoke order 26 Rule 9 CPC seeking appointment of Advocate Commissioner. In the instant case, though the respondent/plaintiff has claimed Rs.15 lakhs with subsequent interest and costs from the petitioners/defendants, he has filed petition, seeking appointment of Advocate-Commissioner to estimate the cost of the construction, that would amount to collecting evidence, since the claim of the respondent/plaintiff was for a quantified sum. It is also

pertinent to note that Advocate-Commissioner was appointed without issuance of notice to the petitioner/defendants and after inspection, he has filed his report, however, again the respondent/plaintiff filed I.A. No.810 of 2011 in the earlier I.A. No.679 of 2011 to reissue warrant to the same Commissioner for the purpose of estimating the value of the construction work.”

and also considering the decision of this Court reported in **2016 (1) TLNJ 270 (Civil) in the case of Ramasamy and other Vs. Dhanraj and Others** which reads as follows:

“Application filed by the petitioner for appointment of Advocate Commissioner at the stage of Appeal application Dismissed - Revision challenged the same held suit has been filed by the petitioner for permanent injunction. It is for the petitioner to prove his possession on the basis of the oral and Documentary evidence advocate Commissioner cannot be appointed-Revision Petition Dismissed.”

6. In the light of the aforesaid judgement cited supra, this Court is not inclined to entertain the Civil Revision Petition. Accordingly, the Civil Revision Petition stands dismissed. No Costs. Consequently, connected Miscellaneous Petition is closed.

11.01.2018

Index: Yes/ No
Internet : Yes/No
Speaking Order/Non Speaking Order
RKP

To

The District Munsif cum Judicial Magistrate,
Pennagaram.



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D. KRISHNAKUMAR J.,

RKP



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