

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.4637 of 2014
& M.P.No.1 of 2014

1.M.Poongodi
2.M.Kartikeyan
3.M.Divya

.. Petitioners

Vs.

1.S.Poongavanam (Deceased)
2.Thyagarajan

.. Respondents

(R2 brought on record as legal representative of the deceased sole respondent vide court order dated 21.12.2017 made in M.P.No.1/2015 in C.R.P.No.4637/2014)

PRAYER: Civil Revision Petition filed Under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 08.08.2014 made in I.A.No.4 of 2014 in O.S.No.10 of 2012 on the file of the Additional Sub Court, Chengalpet.

For Petitioner : Mr.K.Govi Ganesan

For R1 : Died

For R2 : M/s.R.Ramanlal

ORDER

This Civil Revision Petition is filed to set aside the fair and decretal order dated 08.08.2014 made in I.A.No.4 of 2014 in

O.S.No.10 of 2012 on the file of the Additional Sub Court, Chengalpet.

2.The petitioners are legal heirs of deceased defendant Mahendran and deceased first respondent is the plaintiff in O.S.No.164 of 2002 on the file of the Additional Sub Court, Chengalpet. The first respondent, since deceased plaintiff filed the said suit against one Mahendran for declaration of title, recovery of possession and for permanent injunction in respect of the suit schedule property. By the judgment and decree dated 17.11.2011, the suit was decreed partly. The first respondent filed Appeal in A.S.No.10 of 2012 on the file of Additional Sub Court, Chengalpattu, challenging the portion of the judgment rejecting his claim. In appeal, the first respondent filed I.A.No.4 of 2014 under Order XXVI Rule 9 and Section 151 of C.P.C for appointment of an Advocate Commissioner to note down the physical features, to measure the suit property and the property of the first respondent and to submit his report with plan in order to decide the issue in the appeal.

3.The first petitioner filed counter affidavit and petitioners 2 and 3 adopted the said counter affidavit. According to the first petitioner, the first respondent is introducing a new case and is

trying to gather evidence by appointing an Advocate Commissioner. The first respondent has not stated in the plaint as well as in the grounds of appeal that he is in possession of lesser extent and therefore, appointment of Advocate Commissioner is not necessary.

4.The learned Judge considering the averments in the affidavit, counter affidavit and materials on record, allowed the application on the ground that the report of the Advocate Commissioner will help the Court to come to correct conclusion and no prejudice will be caused to the petitioners.

5.Against the said order dated 08.08.2014, allowing I.A.No.4 of 2014 in O.S.No.10 of 2012, the petitioners have come out with the present Civil Revision Petition.

6.Heard the learned counsel for the petitioners as well as the second respondent and perused the materials available on record. Pending Civil Revision Petition, the first respondent/plaintiff died. The legal representative of the second deceased first respondent was impleaded as second respondent vide order dated 21.12.2017 made in M.P.No.1 of 2015 in C.R.P.No.4637 of 2014.

7.The contention of the learned counsel for the petitioners that first respondent/plaintiff is introducing a new case and finding of the learned Judge that no prejudice would be caused to the petitioners are erroneous and is liable to be set aside has no force. The deceased first respondent has filed appeal, challenging the judgment partly rejecting his claim. The learned Judge allowed the application for appointment of Advocate Commissioner on the ground that the report of the Advocate Commissioner will assist the Court in coming to a correct conclusion. There is no error in the said reasoning. Even in the appeal, the Advocate Commissioner can be appointed. The report of the Advocate Commissioner will assist the Court.

8.For the above reason, the Civil Revision Petition is dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
gsa

To

The Additional Sub Judge,
Chengalpet.



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V.M.VELUMANI, J.

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