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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P.(PD)(MD) No.770 of 2018
and C.M.P.(MD) No.3408 of 2018

1. Mariyammal
2. Kuthalingam
3. Komu
4. Kumar
5. Kannan
6.Shanmugavel ... Petitioners/Petitioners/Plaintiffs

-vs-

1. Shanmugavelar
2. Kumaresan
3. Valli Ammal ... Respondents/Respondents/Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India praying to allow the civil revision petition by setting aside the order passed in I.A.No.191 of 2017 in O.S.No.111 of 2013 dated 23.01.2018 on the file of the District Munsif Court-cum-Judicial Magistrate Court, Shencottah, and thus render justice.

For Petitioners : Mr.R.Mani Maran

O R D E R

The revision petitioners are the plaintiffs in O.S.No.111 of 2013 dated 23.01.2018 on the file of the District Munsif Court-cum-Judicial Magistrate Court, Shencottah and in the suit, they sought for a declaration to declare the suit schedule walls as common walls and also for permanent injunction. During pendency of the suit, the plaintiffs / revision petitioners filed an application in I.A.No.191 of 2017 for re-issuance of warrant to the Advocate Commissioner to inspect the suit property and note down its measurements with the assistance of a Surveyor and the said application was dismissed by the Trial Court, stating that the Court will not solely rely upon the report of the Advocate Commissioner to arrive at a just decision in the final judgment and therefore, re-issuance of warrant or appointment of another Advocate Commissioner is unwarranted. Challenging the said order, the petitioners are before this Court.

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2. It is the case of the revision petitioners that based on the

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application made by them in I.A.No.613 of 2013, an Advocate Commissioner was appointed to inspect the suit scheduled items and file a report and in the report, though it has been stated that the exact point in respect of survey number is not clear, the Advocate Commissioner himself has rendered a finding that the wall belongs to the defendants, showing as if the property was surveyed with the help of a Surveyor. It is the further case of the petitioners that the said report, besides being detrimental, will cause much prejudice to them, if a decree is passed based on the report.

3. The revision petitioners state that the Advocate Commissioner has purposely omitted to survey the southern side of the suit schedule property and unless the entire properties are measured completely, the dispute could not be easily resolved on the basis of the report. Above all, the Advocate Commissioner has taken measurement in respect of defendants' properties alone, leaving aside the petitioners' properties in a biased manner. Therefore, it is pleaded that it is absolutely necessary for re-issuance of warrant in this case so as to do substantial justice.

4. Heard the learned counsel for the petitioners and the notice to other side is dispensed with, in view of the nature of disposal of this case.

5. Admittedly, the suit was filed for permanent injunction, in which, an Advocate Commissioner was also appointed to inspect the property so as have a clear picture and idea on the matter. The Advocate Commissioner duly appointed by the Trial Court has completed his job to the satisfaction of the Court and he cannot be made to dance according to the whims and fancies of either parties. The revision petitioners / plaintiffs , without filing any formal petition to scrap the earlier report, have sought for re-issuance of warrant, which is not maintainable in law and the said act is depreciable. The plea of re-issuance of warrant or appointment of another Advocate Commissioner can be heard only after scrapping of the previous report of the Advocate Commissioner. It is pertinent to mention here as rightly observed by the Trial Court, the purpose of appointment of an Advocate Commissioner is to have some idea over the issue, which cannot be construed as an encyclopaedia for taking a decision in the pending suit by the Trial Court and the plaintiffs should prove their case by letting oral and documentary evidence. It is seen that the suit is of the year 2013 and the same is pending for about five years without any progress. Therefore, the Trial Court is right in disallowing the petition of the plaintiffs and no necessity arose for this Court to interfere with the order of the Trial Court.

6. In the result,

a) this civil revision petition is dismissed, thereby confirming the order passed in I.A.No.191 of 2017 in O.S.No.111 of 2013 dated 23.01.2018 by the learned District Munsif-cum-Judicial Magistrate, Shencottah;

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b) the revision petitioners are at liberty to file an application for scrapping of the earlier Advocate Commissioner's report, if so required, within a period of two weeks from the date of receipt of a copy of this order and if any such application is filed, the Trial Court is directed to number the application, consider the same and pass suitable orders thereon on merits and in accordance with law within one month thereafter;

c) the Trial Court is further directed to dispose of the suit in O.S.No.111 of 2013 within a period of six months from the date of passing orders on the application, if filed by the defendant (within the stipulated period of time fixed by this Court), without giving any unnecessary adjournment to either parties and the parties shall also cooperate for early disposal of the suit within the specified period as indicated above.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To:

1. The District Munsif -cum-Judicial Magistrate,
   Shencottah.

2. The Record Keeper,
   Madurai Bench of Madras High Court,
   Madurai. (2 Copies)

+ 1 CC TO Mr.R.MANIMARAN, ADVOCATE IN SR No. 62377

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TE/SV-MMS/SAR-3 : 14/06/2018 : 3P/5C

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