



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.62 of 2015

M.P. (MD) No.1 of 2015

1. Chandran

2. Meena

.. Petitioners

Vs.

1. Prabaharan

2. Vasantha Mala

.. Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.02.2014 passed in I.A.No.273 of 2013 in O.S.No.194 of 2008 on the file of the learned District Munsif-Cum-Judicial Magistrate, Cheranmahadevi.

For Petitioners : Mr.J. Ashok
for Jeyapaul Associates
For Respondents : Mr. M.P. Senthil

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 26.02.2014 passed in I.A.No.273 of 2013 in O.S.No.194 of 2008, on the file of the learned District Munsif-Cum-Judicial Magistrate, Cheranmahadevi.

2. The petitioners are the plaintiffs and the respondents are the defendants. The plaintiffs have filed a suit in O.S.No.194 of 2008 before the District Munsif-Cum-Judicial Magistrate Court, Cheranmahadevi, to declare the III schedule property absolutely belongs to them and for recovery of possession in respect of the III Schedule Property A T Cross Wall and for mandatory injunction to close TC entrance. During the pendency of the suit, the petitioners have filed an interlocutory application in I.A.No.689 of 2008 for appointment of an Advocate Commissioner to measure the suit schedule properties with the assistance of a qualified surveyor. The Advocate Commissioner has inspected the suit properties and filed his report. But, the Advocate Commissioner omitted to measure the exact measurements on the eastern and western side of the III Schedule property. After filing objections to the Commissioner's report, the petitioners have filed an interlocutory application in I.A.No.273 of 2013 in O.S.No.194 of 2008 before the learned District Munsif-Cum-Judicial Magistrate, Cheranmahadevi, for re-issuance of commissioner's warrant, for the purpose of measuring the



III Schedule property. The trial Court has dismissed the said interlocutory application. Aggrieved over the same, the revision petitioner has come forward with this Civil Revision Petition.

3. The grievance of the revision petitioners is that the Advocate Commissioner has inspected the suit schedule property and filed his report and omitted some portion in his report. The learned trial Judge considered that the report of the Advocate Commissioner has already been filed which was taken on file and the same has also been marked in the Proceedings.

4. The learned counsel for the respondents also admitted that the entire proceedings was completed and the case was posted for argument of both the sides.

5. This Civil Revision Petition has been filed in the year 2015. Admittedly, the petitioners has the necessity for re-issuance of the warrant to the same Advocate Commissioner to prove the case by either of the parties. This Court absolute view that the Court can re-issue the warrant at any point of time, for completion of the report which was filed.

6. Considering the facts and circumstances of the case and the grievance expressed by the petitioners before this Court, this Court is inclined to allow this petition. The learned District Munsif-Cum-Judicial Magistrate, Cheranmahadevi is directed to re-issue the warrant to the same Advocate Commissioner within a period of one week from the date of copy of receipt of this order. The Advocate Commissioner is further directed to inspect the suit property, after issuing notice to both the parties and file a report, within a period of two weeks and on filing such report by the Advocate Commissioner, the learned District Munsif-Cum-Judicial Magistrate, Cheranmahadevi is directed to dispose of the suit in O.S.No.194 of 2008, within a period of two months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To
The District Munsif-Cum-Judicial
Magistrate Court,
Cheranmahadevi.

KSA
RJ/RSK/SAR-1 : 11/07/2018 : 2P/2C