



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1732 of 2017

and

C.M.P. (MD) .No.9421 of 2017

1.Shanmugapriya

2.Kandasamy @ Kanthaiah

... Revision petitioners/
Petitioners/Defendants

Vs.

1.Ganapathy

2.Velayee

... Respondents/Respondents/Plaintiffs

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 16.08.2017 made in I.A.No.403 of 2017 in O.S.No.29 of 2015 on the file of the District Munsif Court, Devakottai, Sivagangai District.

For Petitioners : Mr.B.Muruganandam

For R1 & R2 : Mr.S.M.Sanjay

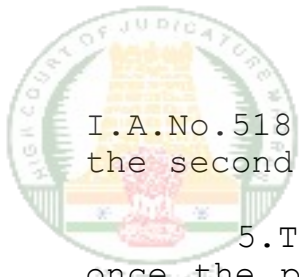
ORDER

This Civil Revision Petition has been filed against the fair and decretal order, dated 16.08.2017 passed in I.A.No.403 of 2017 in O.S.No.29 of 2015 by the District Munsif Court, Devakottai, Sivagangai District.

2.The petitioners are the defendants in a suit in O.S.No.29 of 2015 and the respondents are the plaintiffs. The respondents/plaintiffs have filed the above suit before the District Munsif, Devakottai, for declaration and permanent injunction. During the pendency of the suit, the petitioners/defendants have filed an application in I.A.No.403 of 2017 under Order 26 Rule 9 and Section 151 C.P.C., before the District Munsif, Devakottai, for appointment of an Advocate Commissioner to survey the suit property and file a report, which was dismissed by the trial Court. Challenging the same, the petitioners/defendants are before this Court.

3.Heard the learned counsel for the petitioners, learned counsel for the respondents and perused the materials available on record.

4.The learned counsel appearing for the petitioners submitted that the learned Judge has dismissed the I.A only on the ground that earlier, the petitioners have filed an application in I.A.No.518 of 2015 for the very same prayer and the same was dismissed for default, due to non-service of notice to the respondents/plaintiffs and instead of filing an application under Order 9 Rule 9 of CPC, to restore the earlier application in



I.A.No.518 of 2015, the petitioner has filed the present I.A., for the second time, which is not maintainable.

5.The learned counsel for the respondents submitted that once the petitioner has filed an application in I.A.No.518 of 2015 for the very same prayer and the same was dismissed for default, it is the bounden duty of the petitioners/defendants to file an application to restore the said application. Without doing so, the present application has been filed. Therefore, the respondents/plaintiffs prayed for dismissal of the present Civil Revision Petition.

6.Admittedly, the petitioner has filed an application in I.A.No.518 of 2015 seeking appointment of an Advocate Commissioner, which was dismissed for default, due to non-service of notice to the respondents/plaintiffs. Once the said application was dismissed for default, as on date, there is no appointment of Advocate Commissioner by the trial Court.

7.In fact, I already held that in all the cases, in civil suit an Advocate Commissioner should be appointed for the purpose of getting report from the Commissioner for speedy disposal of the suit. In this case, though the application has been filed in the year 2015, which was dismissed for default, there is no bar to the petitioner to file an application for the second time with the very same prayer. Therefore, the second application which was filed by the petitioners/defendants is absolutely maintainable. Therefore, no prejudice would be caused to the respondents, if the Advocate Commissioner is appointed.

8.In the result, this Civil Revision Petition is allowed and the order passed in I.A.No.403 of 2017 is set aside and the learned District Munsif, Devakottai, Sivagangai is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, by directing the Advocate Commissioner to inspect the suit schedule property and file a report within a period of four weeks thereafter. Further, the trial Court is directed to dispose of the suit in O.S.No.29 of 2015 within a period of four months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

<https://hcservices.ecourts.gov.in/hcservices/>
1. The District Munsif, Devakottai,
Sivagangai District.



2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. **(2copies)**

+1CC to Mr.S.M.SANJAY, Advocate, SR.No.75981

+1CC to Mr.B.MURUGANANDAM, Advocate, SR.No. 75869

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