

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 30.01.2018
Delivered on : 28.03.2018

WEB COPY

CORAM :**THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM**

C.R.P. (PD) (MD)No.828 of 2011
and
M.P(MD) .No.1 of 2011

1.Gurusamy
2.Gurujothi
3.Venkatachalam

... Petitioners/Petitioners/Plaintiffs

vs.

1.Muthumani
2.Packialakshmi

.. Respondents/Respondents/Defendants

PRAYER: Petition filed under Article 227 of Constitution of India, against the order dated 09.12.2010 passed in I.A.No.1175 of 2010 in O.S.No.301 of 2007 on the file of Additional District Munsif Court, Srivilliputhur and allow this revision petition.

For Petitioners : Mr.M.Saravanakumar
For Respondents : Mr.A.Sivaji

ORDER

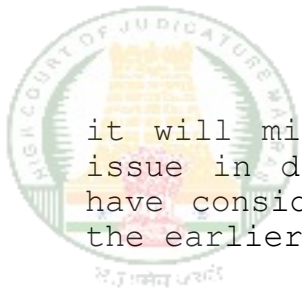
This Civil Revision Petition has been preferred against the order passed in I.A.No.1175/10 in O.S.No.301 of 2007 on the file of Additional District Munsif Court, Srivilliputhur.

2.The brief facts of the case is that the respondents/plaintiffs have filed the suit in O.S.No.301 of 2007 for the relief of declaration and permanent injunction. Advocate / Commissioner has been appointed. He has inspected the suit property and filed his report. The petitioners / defendants have again filed a Commissioner application in I.A.No.1175/2010 by stating that they have objection in the earlier Commissioner's report.

3.The learned counsel for the respondent submitted that since already a commissioner was appointed and he has filed his report, they are not entitled to seek for Commissioner's appointment for the second time. Hence, the petition is to be dismissed.

4.After perusal of records, the trial Court has dismissed the application. Aggrieved over the same they have come forward with this application.

5.The learned counsel for the defendants submitted that the lower Court ought to have considered that by the appointment of Advocate Commissioner, the respondent will not be prejudiced in any manner and



it will minimize the oral and documentary evidence for deciding the issue in dispute between the parties to the litigation and ought to have considered the objections filed on the side of the revision for the earlier commissioner's report and pray to allow the application.

6. Heard both sides and perused the documents available on record.

7. The I.A.No.1175 of 2011 was filed by the petitioners/defendants for the appointment of commissioner to inspect and to measure the suit property in order to note down the physical feature and to file report. These petitioners are the defendants in the suit against whom the suit has been filed to declare the third schedule property as a common pathway and for consequential relief of permanent injunction. It is the averment by them that already a commission application was filed by the respondent in I.A.No.1066 of 2007 and a report also filed which does not disclose the real existing feature and objection also filed. Hence, these petitioners have filed this petition for the commissioner to note down the real existing features. The respondent has filed his counter stating that the earlier commissioner report is clear and crystal and there is no necessity for the appointment of another commissioner.

8. On perusal of the averments in the petition it is seen that the petitioners have not stated any specific area where the commissioner has not disclosed the existing features by referring the same in his objection for the report. Further in the petition, the petitioners have not stated as to the aspect the Commissioner's report is an unsatisfactory one. Hence in the absence of any specific omission where the Commissioner's Report is lacking in mentioning the existing feature, which is very much essential for arriving at a decision in this case. Unless, it is clearly placed by the petitioners that the important aspects which are necessary for deciding the relief sought by the parties, the petition filed by the petitioners seeking for appointment of commissioner for the second time is a baseless one. Hence, the filing of the petition by the petitioners does not require any purpose and it appears that it is filed only with a view to prolong the proceeding of the case.

9. Hence, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

TO

The Additional District Munsif, Srivilliputhur.

+1cc to Mr.A.Sivaji, Advocate, SR.No.58600.

Sub Assistant Registrar

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and

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