

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.02.2019

Coram:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.R.P. (PD)No.109 of 2006

and C.M.P.No.17227 of 2018 and C.M.P.No.1077 of 2006

1.R.Ayyammal

2.U.Marudhachalam

3.G.Easwari

4.R.Kaliammal

5.G.Lakshmi

6.K.Pappusamy

7.K.Mani

.. Petitioners

versus

1.Shanmughasundaram @

V.N.Shanmugham

2.K.Shanmugam

3.C.N.Shanmughasundaram @

C.N.Shanmugham

4.K.Shanmugam

5.A.Dhanalakshmi

6.A.Saraswathy

7.R.Mohankumar

8.R.Selvi

9.Gowri

10.K.Ponnammal

11.K.Natarajan

12.K.Thangavel

13.Devarajan

... Respondents

[R-6 Died, R-13 record the LRs
of the deceased R-6 vide
order dated 21.08.2018 as
per memo dated 21.08.2018]

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the order dated 27.12.2005 made in I.A.No.831 of 2005 in A.S.No.25 of 2005 on the file of the learned III Additional Subordinate Judge, Coimbatore District.

For Petitioners

: Mrs.Veena Suresh for
Mr.T.R.Rajaraman

For Respondents

: No Appearance

O R D E R

This Civil Revision Petition has been filed against the order dated 27.12.2005 made in I.A.No.831 of 2005 in A.S.No.25 of 2005 on the file of the learned III Additional Subordinate Judge, Coimbatore District.

2. The Interlocutory Application in I.A.No.831 of 2005 was filed by the respondents, under Order 26 Rule 9 r/w Section 151 of the Code of Civil Procedure, seeking an order to appoint an Advocate Commissioner to note down the physical features of the properties on all the four sides surrounding the suit property and also to measure the suit property with the assistance of a Taluk Surveyor and directing the Commissioner to file his report. The trial Court has allowed the said application, as against which, the present Revision came to be filed by the petitioners herein.

3. Heard the learned counsel appearing for the revision petitioners and also perused the documents available on record.

4. Despite service of notice and the name of the respondents having been printed in the cause list, none appeared for them.

5. The learned counsel appearing for the revision petitioners submitted that there are already 2 Advocate Commissioners were appointed by the trial Court in I.A.No.113 of 1993 and I.A.No.481 of 2001 and those Commissioners reports were exhibited as Ex.C.1 to Ex.C.4 and one of the Commissioner has also examined as P.W.4. At this stage, the subsequent purchasers have filed this application to appoint the Commissioner on the ground the plaintiffs have not filed application to appoint any Commissioner and therefore, the Commissioner is necessary but some of the defendants have filed applications for appointment of Commissioners and accordingly, they were appointed by the trial Court.

6. It is curious to note that this application has been filed in the appeal stage. When the trial Court has already passed a decree and judgment based on the Commissioners reports, which are exhibited in the trial Court, the subsequent purchasers in the appeal stage alleging that the plaintiffs have not filed any Commission application and only some of the defendants have filed a petition for appointment of the Commissioner and sought for fresh Commissioner.

7. It is to be noted that when there is evidence available on record, the Court has already relied upon such evidence, the appellants, who being the subsequent purchasers cannot non-suit those evidence, just taking out other

Commissioner. The trial Court has not gone into the above issue but simply appointed the fresh Commissioner. When there is already Commissioners reports are executed, the Appellate Court ought to have taken note of the above fact. Therefore, every stage as a matter of right parties cannot seek an appointment of Commissioner at their whims and fancies.

8. The order passed by the Appellate Court appointing the Advocate Commissioner is not according to law because already two Commissioners Reports were exhibited in the trial Court and at this stage, again appointing another Commissioner in the appeal stage did not arise at all. Hence, the order of the trial Court requires interference.

9. In the result, this Civil Revision Petition is allowed and the order of the trial Court passed in I.A.No.831 of 2005 in A.S.No.25 of 2005 dated 27.12.2005 is hereby set aside. The Appellate Court is directed to dispose of the Appeal within a period of two months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

sri

To

1.The III Additional Subordinate Judge,
Coimbatore District.

2.The III Additional District Munsif,
Coimbatore.

+1cc to Mr.T.R.Rajaraman, Advocate, S.R.No.16341

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PA(CO)
GN(12/04/2019)