

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Dated : 06.12.2019

CORAM :

**THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN**

**CRP.(PD).No.2643 of 2019**

**and**

**C.M.P.No.17459 of 2019**

1. Balakrishnan

2. Vyapuri

3. Tamilselvamn

4. Selliammal

... Petitioners

Versus

Kannan

... Respondent

**PRAYER:** Civil Revision Petition filed under Section 227 of the Constitution of India to call for the records culminating in the order and decree dated 30.01.2019 in I.A.No.1798 of 2019 in O.S.No.106 of 2013 passed by the learned I Additional District Munsif, Thirukovilur.

For petitioners : Mr. K. Shakespeare

For respondent : Mrs. R.Poornima

## ORDER

With the consent of both the parties, the Civil Revision Petition is taken up for final disposal at the Admission stage itself.

2. This Civil Revision Petition has been filed challenging the order of dismissal of the petitioners' application in I.A.No.1798 of 2018 on the file of the I Additional District Court, Thirukovilur, for appointment of a Commissioner or reissue the warrant to the Advocate Commissioner, who was already appointed by the trial Court .

3. The respondent/plaintiff filed a suit in O.S.No.106 of 2013 on the file of the I Additional District Court, Thirukovilur for declaration, permanent injunction and also for a mandatory injunction to remove the encroachment. Pending suit, the respondent/plaintiff filed a petition to appoint an Advocate Commissioner to measure the B schedule property and also to find out the encroachment made by the petitioners herein and an Commissioner was also appointed by the Trial Court and he had measured the property and filed a report, the petitioners herein had also filed their objections. Now the suit is posted for trial. At this stage, the petitioners herein filed an application to appoint another Advocate Commissioner to measure the property as per the settlement deed said to have been executed by the father of the first petitioner and the respondent. The trial Court, by an

order dated 30.01.2019, dismissed the application holding that already the Commissioner has filed a report, for which, the petitioners herein had also raised their objections, which is sufficient to dispose the suit and there is no necessity for appointing another Commissioner or reissuing warrant to the earlier Commissioner. That apart, after the matter is being listed in the Special list for trial, the said application has been filed by the petitioners only to drag on the proceedings. Hence, the present revision has been filed.

4. Heard both sides and perused the materials available on records carefully.

5. From a perusal of the records, it could be seen that earlier the Advocate Commissioner had inspected the property and filed his report, for which the petitioners have also raised their objections. Thereafter, when the matter is listed for trial, the petitioners have come out with the present application to appoint a new Commissioner or reissue a warrant to the Commissioner. The Court below after considering the records come to a conclusion that the earlier report filed by the Commissioner is sufficient to dispose the suit and no fresh commissioner needs to be appointed to measure the property. I have also carefully perused the records. I do not find any illegality or irregularity in the order passed by the trial Court and I find no merit in the revision.

6. At this stage, the learned counsel for the petitioners submit that the trial Court may be directed to consider the objection filed by the petitioners in the Commissioner Report in I.A.No.474 of 2015 before the Trial Court. Considering the said submission, the trial court is directed to consider the petitioners objection against the Commissioner Report, at the time of trial.

7. Accordingly, the Civil Revision Petition is dismissed. No costs. Considering the fact that the suit is pending from the year 2013 and the matter is also listed for trial, the trial Court is directed to proceed with the trial and dispose the same within a period of six(6) months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

**06.12.2019**

Index : yes/no  
Internet : yes/no  
Speaking/Non-Speaking order  
mrp

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To  
The I Additional District Munsif,  
Thirukovilur.

CRP.(PD).No.2643 of 2019

**V.BHARATHIDASAN**

mrp



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