



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(MD)No.372 of 2019

WEB COPY

1.Ponnusamy

2.Saraswathi

3.Sathiyabhavani

... Petitioners/Appellants
Defendants

Vs.

Deivaraj

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 29.10.2018 made in I.A.No.14 of 2018 in A.S.No.5 of 2018 by the learned Additional District Judge, Theni.

For petitioners : Mr.B.Jeyakumar

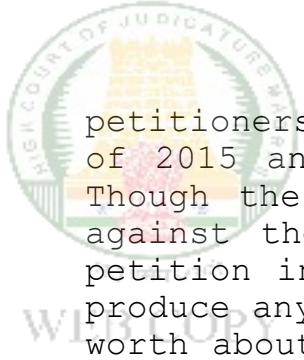
ORDER

The respondent / plaintiff had filed the suit in O.S.No.152 of 2012 for the relief of specific performance. The Trial Court decreed the suit. Against which, the petitioners / defendants filed A.S.No.5 of 2018 before the Court below. Pending appeal, the petitioners / defendants filed I.A.No.14 of 2018 seeking to appoint an Advocate Commissioner to note down the value of the suit property with the help of a qualified engineer and to file a report with values. The Court below dismissed the same, against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioners / defendants would submit that the value of the suit property is worth about Rs.10 lakhs, but the suit agreement is valued at Rs.1,30,000/-. Therefore, in order to assess the real value of the suit property, the petitioners / defendants have filed the commission petition. But, the Court below has erroneously dismissed the same. Thus, he prayed to set aside the order passed by the Court below.

3.Heard the learned counsel for the petitioners / defendants and perused the materials available on record.

4.The respondent / plaintiff filed the suit for specific performance. The Trial Court decreed the suit. Against the Judgment and decree passed by the Trial Court, the petitioners / defendants have filed A.S.No.5 of 2018 before the Court below. Pending appeal, the petitioners / defendants filed this commission petition. Perusal of records would show that pending suit also, the



petitioners / defendants filed a commission petition in I.A.No.396 of 2015 and the same was dismissed on merits by the Trial Court. Though the petitioners / defendants have not preferred any appeal against the said order, they have filed the very same commission petition in the appeal also. The petitioners / defendants did not produce any documents to show that the value of the suit property is worth about Rs.10 lakhs. The learned Judge finding that though the petitioners / defendants did not challenge the dismissal order by the Trial Court in the commission petition, they have filed the very same commission application in the appeal and therefore, the application is clearly barred by the principles of *res-judicata*, had rightly dismissed the commission petition, which does not warrant any interference at the hands of this Court. Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Additional District Judge,
Theni.
- 2.The Record Keeper,
V.R. Section,(2 copies)
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
C.R.P (MD) No.372 of 2019
21.06.2019

smn

MK (04.07.2019) 2P 4C