



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.04.2019

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.R.P. (PD) (MD) No.637 of 2019

and

C.M.P (MD) No.3260 of 2019

1.Jeganathan
2.Ramasamy
3.Perumal Seit
4.Hariraj
5.Mariselvam

... Petitioners/Petitioners/
Defendants

Vs.

Jeyaprakash (died)
1.Henry
2.Paul Alphonse
3.Susai Antoni Xavier
4.Pavul Selvaraj

.../1st Respondent/1st plaintiff
... Respondents 1 to 4 /
Respondents 2 to 5/ Plaintiffs 2 to 5

Jhonson (died)
5.Justin Thiraviyam
6.Micheal Sagayam
7. Sagaya Jerald

... /6th Respondent/6th Plaintiff
... Respondents 5 to 7/
Respondents 7 to 9/Plaintiffs 7 to 9

(The respondents represent themselves & on behalf
of Singamparai Roman Catholic Christian Society people)

PRAYER:- Civil Revision Petition filed under Article 227 of the
Constitution of India, to set aside the order passed in I.A.No.508
of 2016 in O.S.No.106 of 2013 dated 03.12.2018 on the file of the
Sub Court, Ambasamudram.

For Petitioners : Mr.H.Arumugam

ORDER

The petitioners are the defendants in O.S.No.106 of 2013 on
the file of the Sub Court, Ambasamudram. The said suit has been
filed by the respondents/plaintiffs for the relief of declaration
and also for injunction. During the pendency of the suit, the
petitioners herein filed an application in I.A.No.346 of 2013
seeking to appoint an Advocate Commissioner to note down the
properties of the suit schedule property. The said
application was allowed and thereafter, one Advocate was appointed
as Advocate Commissioner. Further, in order to comply the direction



given by the Court, the Advocate Commissioner visited the suit property after giving notice to either side parties and filed his report. After filing report, the learned counsel filed his objection stating that the Advocate Commissioner acted beyond the scope of the petition filed by the petitioners.

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2.In the said circumstances, the petitioners herein filed another one application in I.A.No.508 of 2016 to appoint a new Advocate Commissioner to note down the physical features. The learned Subordinate Judge, Ambasamudram, by order dated 03.12.2018 dismissed the said application stating that there is no necessity to appoint a new Advocate Commissioner. The detailed order passed by the Court below reveals that before filing the application in I.A.No.508 of 2016, the petitioners have not taken any steps to scrap the Advocate Commissioner report filed in earlier. Further, they have not taken steps to revisit the property by utilizing the service of the same Advocate Commissioner. Now on go through the detailed order passed by the learned Subordinate Judge, it is correct to state that the settled proposition in this regard is that without scarping the earlier report filed by the Advocate Commissioner, appointment of a new Advocate Commissioner is unnecessary. More than that the petitioners are having liberty to file their objection and also having chance to examine the Advocate Commissioner as witness before relying the report of the Advocate Commissioner. Without utilizing the said opportunity filing the application for appointment of new Commissioner is un-warranted.

3.In the said circumstances, I am of the considered opinion that the reason indicated by the revision petitioner for dismissing I.A.No.508 of 2016, is having the well considered reasons. However, the petitioner is permitted to file a petition before the trial Court for revisiting the suit by utilizing the Advocate Commissioner, who was appointed in earlier.

4.With the above observation, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (cs-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Subordinate Judge,
<https://hcservices.ecourts.gov.in/hcservices/>
Ambasamudram.
Trichy District.



+1cc to Mr.H.Arumugam,Advocate, SR.No.58438

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