



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.901 of 2019
and
CMP(MD)No.5231 of 2019

1)Selvi
2)Kayathri
3)Sangeetha
4)Raguvaran
5)Rupini

... Petitioners

vs.

Murugesan

... Respondent

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.374 of 2018 in O.S.No.34 of 2015 on the file of the District Munsif Court, Mudukulathur, dated 07.01.2019.

For Petitioners : Mr.T.Selvan

ORDER

Against the dismissal of the petition to re-issue warrant to the advocate commissioner, this revision is filed.

2.The petitioners/plaintiffs filed a suit in O.S.No.34 of 2015 on the file of the District Munsif Court, Mudukulathur, for declaration and permanent injunction in respect of the suit property. In the suit, an advocate commissioner was appointed who after inspection of the suit property filed his report and plan. The petitioners after making objection to the advocate commissioner's report filed the present petition to re-issue warrant to the commissioner on the ground that there is a grave error in the identity of the suit property by the commissioner. The said petition was dismissed by the Court below, against which, this revision is filed.

3.Learned counsel for the petitioners would contend that the Court below did not consider the specific contentions in the present petition and further, there is a grave error with regard to the identity of the suit property in the report filed by the advocate commissioner and therefore, prayed for re-issuance of the warrant to the advocate commissioner.



4. Learned counsel for the respondent/defendant would contend that the commissioner has inspected the suit property and the plan was prepared based on the identification given by the petitioners and without any valid reasons, the commissioner warrant cannot be re-issued and therefore, prayed for dismissal of this revision petition.

5. Heard the learned counsel for the petitioners as well as the respondent.

6. Perusal of record shows that on earlier occasion, based on the petition in I.A.No.207/2015 by the plaintiffs, an advocate commissioner was appointed and he has filed a report and plan as early as on 29.06.2015 and the petitioners also filed objection to the advocate commissioner's report. After three years from the report of the commissioner, the petitioners have filed the present petition to re-issue warrant to the commissioner stating that there is an error in the commissioner's report with regard to the identity of the suit property. The learned Judge relied on a judgment of this Court in Kasthurirangan vs. Commissioner, Arcot Municipality, Vellore District, reported in (2013) 5 MLJ 310, wherein, it has been held that if there are many allegations or any objection filed to the commissioner's report, it is for the Court to either accept or reject the report based on the objections and after the filing of the objection to the commissioner's report before the Court, there is no ground to re-issue warrant to the advocate commissioner. Relying on the above judgment, the learned Judge dismissed the present petition holding that in the present case also, the petitioners have filed their objection to the commissioner's report in 2015 and now after a period of three years, they have come forward with the present petition to re-issue warrant stating that the commissioner has committed a grave error in identifying the property, which is only to protract the proceedings, where, I do not find any infirmity.

Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar(CS)

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To
The District Munsif, Mudukulathur

C.R.P(PD) (MD) No.901 of 2019
19.06.2019