



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.1462 of 2017
and
C.M.P. (MD) No.7587 of 2017

Veeraiah ... Petitioner/6th Respondent /6th Defendant

vs.

1.SP.Ramasamy Ambalam

2.SP.Periyannan Ambalam

... Respondents 1 & 2/Petitioners/Plaintiffs

SP.Seenivasan (died)

Arumugam (died)

3.Ulagappan

Annasamy (died)

Appavu Pandaram (died)

Chockalingam Ambalam (died)

Bhagavathi Ammal (died)

4.Suseela

5.Rajendran

6.Malathi ... Respondents 3 to 6/Respondents 3, 9 to 11/
Defendants 3, 9 to 11

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.06.2017 passed in I.A.No.8 of 2017 in I.A.No.352 of 2012 in I.A.No.337 of 2011 in O.S.No.55 of 2004 on the file of the Additional District Munsif Court, Karaikudi.

For Petitioner : Mr.M.P.Senthil

<https://hcservices.ecourts.gov.in/hcservices/> For R1 & R2 : Mr.Sundar Srinivasan

For R3 to R6 : No appearance

**ORDER**

This Civil Revision Petition has been filed to set aside the order dated 15.06.2017 passed in I.A.No.8 of 2017 in I.A.No.352 of 2012 in I.A.No.337 of 2011 O.S.No.55 of 2004 by the learned Additional District Munsif, Karaikudi.

2.I.A.No.8 of 2017 was filed by the plaintiffs stating that they have filed a suit in O.S.No.55 of 2004 for removing the unlawful construction made in the suit property and for delivery of possession of the same. The plaintiffs have preferred an appeal in A.S.No.3 of 2008 and in the said appeal, a Commissioner was appointed to measure the suit property and to identify the property with the help of Surveyor that was given to the defendants 1 to 6 by the father of the plaintiffs and the suit property was given to the defendants for constructing 'Thanneer Panthal'. The said appeal was also remanded back to the trial Court for the said purpose. The Commissioner was also appointed in I.A.No.337 of 2011 and he has filed a report. The plaintiffs have not satisfied with the report of the said Commissioner, whereas, the defendants have not made any objection. Hence, once again the plaintiffs have filed I.A.No.352 of 2012 for the purpose of measuring the suit property and to identify the property again and the same has been allowed.

3.On 19.03.2016, when the Commissioner was proceeding to measure the property with the help of Surveyor, the defendants made objection and due to the same, the Commissioner could not measure the property and hence, regarding inconvenience that is caused by both the plaintiffs and the defendants, the Commissioner has filed a memo stating that different directions being given to the commissioner by the plaintiffs and the defendants and hence, he was unable to proceed with the execution of the warrant. Hence, the plaintiffs filed another application in I.A.No.8 of 2017 for the same purpose as stated above.

4.On perusal of the application, it is observed that as per the order passed in I.A.No.337 of 2011, the Commissioner has to locate the 6 cents out of 81 cents and for the said purpose, he sought for re-issuing the warrant to the Commissioner. The defendants in their

counter statement contended that the Commissioner was appointed to measure the property and regarding the same, he has filed a report but the plaintiffs have not filed any application to scrap the earlier report and they have filed an application to get a favorable report from the Commissioner.

5.For the said Commissioner report, the plaintiffs have raised objections by stating that exactly the Commissioner has not fixed the property that was given to the defendants. Hence, the alienation of 6 cents out of 81 cents was not properly marked by the said Commissioner this is the grievance of the plaintiffs in the said report filed by the Commissioner.



6. After filing the appeal in A.S.No.3 of 2008 by the plaintiffs, the Commissioner has filed his report and the plaintiffs have not satisfied with the said report and they have filed another application as stated above. The Commissioner has filed his memo by stating that both the plaintiffs and the defendants directed him to locate the property according to their convenience. Hence, the memo has been filed by the Commissioner for appropriate direction.

7. Heard the learned counsel on either side and perused the records carefully.

8. The grievance of the petitioner herein/6th defendant is that in the earlier report filed by the Commissioner, the plaintiffs have not filed any application to scrap the same for the purpose of reissuing the warrant and even in the present application, no proper instruction was given to the Commissioner to mark the 6 cents. On the other hand, the defendants were also demanding the Commissioner to locate the 6 cents according to their convenience.

9. Now, the Commissioner is facing inconvenience because of the different direction given by both the plaintiffs and the defendants. Now, the plaintiffs contended that they will produce necessary documents for the purpose of marking the said 6 cents, but still the plaintiffs and the defendants are not co-operating with the Commissioner by producing sufficient documents and also giving him suitable directions to locate the 6 cents out of 81 cents.

10. In view of the above, both the plaintiffs and the defendants are directed to give proper instructions and produce the necessary documents before the Court below before issuing warrant and the Court below is directed to verify the documents and shall give appropriate document to the Commissioner for the purpose of executing the warrant.

11. Considering the attitude of the parties in causing inconvenience to the advocate commissioner and the filing of commissioner application by one after another, this Court is inclined to dispose of this Civil Revision Petition with cost. Accordingly, the plaintiffs and defendants are directed to pay a sum of Rs.3,000/- and Rs.2,000/- respectively to the credit of Chief Justice Relief Fund within a period of three weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Writs)

// True Copy //



To

The Additional District Munsif,
Karaikudi.

Copy TO :

1. The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai
2. The Section officer, Accounts Section,
Madurai Bench of Madras High Court,
Madurai .

+1 CC to M/s.R.SUNDAR SRINIVASAN, Advocate in SR-55917

+1 CC to M/s.M.P.SENTHIL, Advocate in SR-56214

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mm

PK/12.04.2019 : 4P/6C