



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY****CRP (MD) No.1552 of 2019****and****CMP (MD) No.8229 of 2019**

WEB COPY

1. Kamaraj
2. Latha

... Petitioners

versus

1. Pattammal
2. Sivakumar

... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 15.07.2019 passed in I.A.No.566 of 2018 in O.S.No.1258 of 2015 by the First Additional District Munsif Court, Trichy.

For Petitioners	:	Mr.K.K.Senthil
For Respondents	:	Mr.J.K.Jayaseelan

ORDER

This Civil Revision Petition has been filed challenging the order dated 15.07.2019 passed in I.A.No.566 of 2018 in O.S.No.1258 of 2015 by the First Additional District Munsif Court, Trichy.

2. The application in I.A.N.566 of 2018 in O.S.No.1258 of 2015 has been filed by the revision petitioners, who are the defendants in O.S.No.1258 of 2015, for re-issuance of warrant to the Advocate Commissioner. The said application was dismissed by the Court below for the reason that previously, the plaintiffs filed an interlocutory application for appointment of Advocate Commissioner and in the said application, the Court appointed an Advocate Commissioner and he also filed a report and in the said report, the revision petitioners herein failed to file any objection till the date of passing of the order in the said application. Without filing any objection or cross examination of Advocate Commissioner, the Court below came to the conclusion that the re-issuance of warrant to the Advocate Commissioner is not permissible.

3. The learned counsel appearing for the revision petitioners contended that only for the purpose of marking the boundary lines, the present application was filed and therefore, it is necessary to re-appoint the Advocate Commissioner. However, the Court below failed to consider the request of the revision



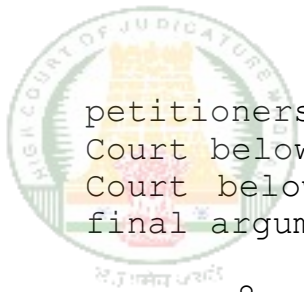
petitioners and dismissed the said application.

4. Per contra, the learned counsel appearing for the respondents contended that previously, an Advocate Commissioner was appointed for the purpose of noting down the physical features. Accordingly, as per the order of the Court below, the Advocate Commissioner visited the premises and filed the report. If there is any grievance over the same, the revision petitioners have to file their objections to the report, but, they have not chosen to file any objection to the report of the Commissioner. On the other hand, they filed the present application. The learned counsel for the respondents further contended that the Commissioner's report was marked through PW1 and even at the time of marking the report, the revision petitioners have not made any objection. So, there is no merit in the application filed for re-issuance of warrant to the Advocate Commissioner. Therefore, the Court below has rightly dismissed the said application filed by the revision petitioners.

5. Heard both sides and perused the records.

6. In the above suit, earlier, the Court below appointed the Advocate Commissioner to note down the physical features of the suit property. As per the order of the Court, the Advocate Commissioner also filed his report. It is an admitted fact that the said Advocate Commissioner's report was marked through P.W.1 and at the time of marking, the revision petitioners have not made any objections for marking the said report. Further, the revision petitioners have also not filed any objection to the Advocate Commissioner's report. In these circumstances, the revision petitioners filed the present application for reissuing the warrant to the Advocate Commissioner.

7. The suit in O.S.No.1258 of 2015 has been filed by the plaintiffs/respondents herein. It is for the plaintiffs to establish their case through oral and documentary evidence. If the plaintiffs are not able to prove their case, no prejudice would be caused to the defendants. The defendants can also deny the claim of the plaintiffs, for which, they can also rely upon documents and also examine the parties to refute the claim of the plaintiff. However, the act of defendants in not filing any objection to the Commissioner's report or to cross examine the Commissioner, but, filing another application for re-issuance of warrant to the Advocate Commissioner clearly shows the intention of the defendants to prolong the proceedings further. Therefore, this Court is of the view that the Court has rightly rejected the application for re-issuance of warrant to the Advocate Commissioner and no interference is required. Further, this Court is of the view that in order to give an opportunity to the revision petitioners and since they intend to file their objection, he is permitted to file his objection within a period of two weeks from the date of receipt of a copy of this order before the Court below. If the revision



petitioners want to cross examine the Advocate Commissioner, the Court below shall permit to do so. After the cross examination, the Court below shall decide the objections on merits at the time of final arguments.

8. It is submitted that in the suit, trial has commenced and the first plaintiff/first respondent herein is the senior citizen and she is aged about 80 years. Hence, the Court below may be directed to dispose of the suit as early as possible.

9. Considering the same, this Court directs the Court below to dispose of the suit in O.S.No.1258 of 2015, within a period of four months from the date of receipt of a copy of this order.

10. With the above directions, the Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The First Additional District Munsif Court,
Trichy.

+1CC TO MR.K.K.SENTHIL, Advocate Sr. No.93473

+1CC TO MR.J.K.JAYASEELAN, Advocate Sr. No. 93234

CRP (MD) No.1552 of 2019

18.10.2019

KG (CO)

TR(19.11.2019) 3P 4C