



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P (MD)No.1746 of 2019

WEB COPY

1.U. Dominic Raj
2.U.Arokia Raj
3.Jaculin Mary
4.Amirtha Mary

... Petitioners/Petitioners/ defendants

Vs.

Kulandai Theras

... Respondent/Respondent/ Plaintiff

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India seeking against the fair and decreetal order dated 30.07.2019 passed in I.A.No. 1006 of 2018 in O.S.No. 369 of 2018 on the file of learned Subordinate Judge, Lalgudi.

For Petitioners : Mr. M. Santharam
For Respondent : Mr.C.GOBINATH

ORDER

This Civil Revision Petition has been filed challenging the order, dated 30.07.2019 passed in I.A.No. 1006 of 2018 in O.S.No. 369 of 2018 on the file of learned Subordinate Judge, Lalgudi.

2. The revision petitioners, who are the defendants, filed I.A.No. 1006 of 2018 in O.S.No. 369 of 2018, on the file of the learned Subordinate Judge, Lalgudi, to re-issue of Advocate Commissioner's warrant. However, the Court below, after hearing both sides, dismissed the application for re-issue of Advocate Commissioner's Warrant stating that the revision petitioners herein not even filed any objection to the Commissioner's report. The suit in O.S.No. 369 of 2018 was filed for the purpose of partition and the Advocate Commissioner's report clearly stated about character and description of the property along with sketch. Therefore, the Court below found that there is no need for re-issue of warrant to the Advocate Commissioner as sought by the revision petitioners herein.

3. The learned counsel appearing for the revision petitioners would submit that the Advocate Commissioner has filed erroneous report without properly measuring the property and hence, it is necessary to re-issue of warrant to the same Commissioner. But, the said facts are not considered by the Court below. Hence, the petitioners have filed the present Civil Revision Petition before this Court.



4. The learned counsel appearing for the respondent / plaintiff would submit that the Court below has rightly considered the application filed by the revision petitioners for re-issue of warrant to the Advocate Commissioner and dismissed the same. He further contended that in fact, the Commissioner has properly measured the property and stated the property description along with sketch, it is only the duty on the respondent / plaintiff to prove his case, who has filed the suit for partition among the parties to the suit. Therefore, filing of Commissioner's report after measuring the property, with description of property, along with sketch, would no way prejudice to the rights of the revision petitioners and re-issue of warrant sought by the revision petitioners is only to drag on the proceedings and hence, he prayed for dismissal of this Civil Revision Petition.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. The suit in O.S.No. 369 of 2018 has been filed by the respondent / plaintiff for partition of the suit property. As stated by the respondent / plaintiff, the revision petitioners / defendants are also entitled to get the shares of the property. The respondent / plaintiff has filed an application for appointment of Advocate Commissioner to measure the property and file a report. Accordingly, the Advocate Commissioner was also appointed by the Court below to measure the property and file a report with description of property along with sketch. The said report will be useful for the Court below to pass final decree and partition the property as well. Further, if at all if there is any discrepancy in the said report, they have to make their objections to the Commissioner's report. Without doing the same, the revision petitioners herein have filed an application before the Court below to re-issue the Advocate Commissioner's warrant, as if the Advocate Commissioner has not measured the property properly.

7. It is for the revision petitioners to file their objections and based on the said objections, they have to cross examine the Advocate Commissioner and prove the same. If the revision petitioners will do so, the Court below may nullify the report and consider the request for re-issue of warrant. Without doing so, the revision petitioners herein approached the Court below for re-issue of warrant and the Court below has rightly dismissed the application stating that the revision petitioners have not at all filed any objection to the report. Unless otherwise, there is any objection filed by the revision petitioners to nullify the Advocate Commissioner's report, the question of filing an application for re-issue of warrant to the same Commissioner does not arise. Therefore, this Court is of the view that the Court below has rightly passed an order in the above application and



hence, there is no infirmity in the order passed by the Court below. Accordingly, this Civil Revision Petition is dismissed.

8. While dismissing the Civil Revision Petition, liberty is granted to the revision petitioners to file their objections if they have not filed any objections to the Advocate Commissioner's report before the Court below till date. If the revision petitioners file an objections to the Advocate Commissioner's report, the same may be accepted by the Court below and the Court below may permit the revision petitioners to cross examine the Advocate Commissioner's report and after cross examination, the Court below shall dispose of the objection petition. The revision petitioners shall file their objections, within a period of three weeks from the date of receipt of a copy of this order. If any objections filed by them within a period of three weeks, the Court below shall dispose of the same within a period of three weeks, thereafter. No costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

Trp

To

The Subordinate Judge, Lalgudi.

+1 CC to Mr.M.SANTHARAM, Advocate (SR-95262[F] dated 31/10/2019)

+1 CC to Mr.C.GOBINATH, Advocate (SR-95554[F] dated 01/11/2019)

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30.10.2019

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