



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

CRP(MD)No.1967 of 2019
and CMP(MD)No.10112 of 2019

1. K.Shanmugavel
2. S.Mariyammal
3. G.Mariyammal
4. G.Kaleeshwari

... Petitioners/Petitioners/Plaintiffs

versus

K.Karuppasamy

... 1st Respondent/1st Respondent/
1st Defendant

Civil Revision Petition filed under Article 227 of Constitution of India, against the order dated 26.08.2019 made in I.A.No.1 of 2019 in O.S.No.25 of 2015 on the file of the District Munsif Court, Sattur.

For Petitioners : M/s.M.Thirunavukkarasu

For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed challenging the order dated 26.08.2019 made in I.A.No.1 of 2019 in O.S.No.25 of 2015 on the file of the District Munsif Court, Sattur.

2. The revision petitioners herein are plaintiffs in O.S.No.25 of 2015 on the file of the District Munsif, Sattur, for partition. They filed an application in I.A.No.411 of 2015 before the Court below for appointment of an Advocate Commissioner to inspect the suit property and note down the age of the suit building, type of construction and what materials are used while constructing the suit building. The Court below appointed an Advocate Commissioner and the Advocate Commissioner also filed a report. Thereafter, the revision petitioners herein filed another application in I.A.No.1 of 2019 in O.S.No.25 of 2015 before the Court below to examine the P.W.D. Engineer, who had accompanied the Advocate Commissioner at the time of inspecting the suit building. However, the Court below, vide order dated 26.08.2019, dismissed the said application, stating that there is no need for the revision



petitioners to examine the PWD Engineer and his deposition would in no way be helpful to the present suit, since it is filed for partition. Aggrieved over the same, the revision petitioners are before this Court.

3. The learned counsel appearing for the revision petitioner submitted that in the present case, while inspecting the suit property, the Advocate Commissioner, in order to find out the age of suit building, type of construction and what materials are used while constructing the property, has taken the aid of the PWD Engineer and thereafter, the Advocate Commissioner filed his report. In these circumstances, the abovesaid application has been filed for the purpose of examining the PWD Engineer in the present suit. However, the Court below rejected the application stating that the deposition of PWD Engineer would in no way be helpful to the present suit for partition. According to the revision petitioner, the examination of PWD Engineer is just and necessary to find out the age of the building and type of construction. Further, the learned counsel for the revision petitioners submitted that the respondent in the present suit has made no objection in the said application. However, the Court below dismissed the application, without giving an opportunity to the revision petitioner to cross examine the PWD Engineer.

4. Heard the learned counsel appearing for the revision petitioners.

5. Though notice has been served on the respondent and his name has been printed in the cause list, none appeared on behalf of the respondent.

6. Admittedly, the Court below appointed the Advocate Commissioner to find out the physical features, age, quality of the building and nature of the construction and the materials used therein. The Advocate Commissioner has also taken the aid of PWD Engineer and filed his report. Furthermore, there is no objection on the part of the respondent. Therefore, it is just and necessary on part of the Court below to permit the parties to file objection and cross examine the Advocate Commissioner and also the persons, who had accompanied the Advocate Commissioner while inspecting the suit property. But, in the present case, even after no objection on the part of the respondent, the Court below, on its own, came to the conclusion that there is no necessity to examine the PWD Engineer, since the suit is filed for partition. This Court is not in a position to accept the reason cited by the Court below. Therefore, the order passed by the Court below is liable to be rejected.

7. Accordingly, this Civil Revision Petition is allowed. The order dated 26.08.2019 made in I.A.No.1 of 2019 in O.S.No.25 of 2015 on the file of the District Munsif Court, Sattur, is hereby set



8. The Court below shall permit the revision petitioners to examine the PWD Engineer, as prayed for in the above said application. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

ogy

To

The District Munsif Court,
Sattur.

+1 CC to M/s.M. THIRUNAVUKARASU, Advocate (SR-99756[F] dated 20/11/2019)

CRP (MD) No.1967 of 2019
20.11.2019

JMN(22.11.2019) 3P : 3C