



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.11.2019

CORAM:

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THE HONOURABLE MR.JUSTICE **KRISHNAN RAMASAMY**

C.R.P (MD)No.1045 of 2017

and

CMP(MD).No. 4616 of 2017

1.A. Ramachandran
2.A.K.C. Kumaraswamy
3.V.Nagarajan
4.M.C. Manickavasagam
5.M.Kolappan

... Revision Petitioners /
respondents

Vs.

1.The Assistant Commissioner,
HR & CE Department,
Nagercoil, Vadiveeswaram Village,
Agateeswaram Taluk,
Kanyakumari District.

2.The Commissioner,
Hindu Religious and Charitable
Endowments Department,
Chennai -34.

3.Kottar Chettu Nainar Desika Vinayagar Devasthanam Trust,
rep. by its Trustee,

4.K.Sivathanumalayan Chettiyar.

5.K.Chinna Mooppanar

6.K.R. Chitambarathanu

7.N.C. Thanu

8.K.Sivagurunathan

9.C.S. Kumaraswamy

... Respondents / Petitioners

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India against the fair and decreetal order dated 18.04.2017 made in I.A.No.95 of 2017 in A.S.No.13 of 2007 on the file of the Second Additional Subordinate Judge, Nagercoil.



For Petitioners : Mr. R. Venkatesan
For R1 and R2 : Mr. P. Vinoth for M/s.R.Subramanian
For R3 to R9 : Given up

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ORDER

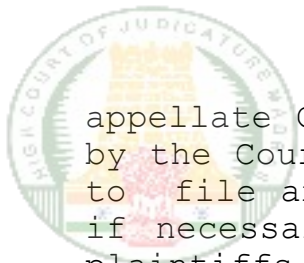
This Civil Revision Petition has been filed against the order dated 18.04.2017 passed in I.A.No.95 of 2017 in A.S.No.13 of 2007 on the file of the learned Second Additional Subordinate Judge, Nagercoil.

2. The revision petitioners herein have filed an application in I.A.No. 95 of 2007 in A.S.No.13 of 2007 for appointment of an Advocate Commissioner to note down the physical features of the property. However, the Court below, after hearing both sides dismissed the application stating that the said application has been filed by the petitioners only to drag on the proceedings and to collect the evidence. Further, the Court below has observed that it is for the revision petitioners to establish their case by producing the oral and and documentary evidence. Further, the Court below has observed that the petitioners have filed the present application only to establish their further case. However, the Court below rejected the said contention and stated that the petitioners are attempting to collect the evidence and therefore, the same cannot be permitted.

3. When the matter was taken up for hearing, the learned counsel appearing for the petitioners submitted that the present application has been filed for an appointment of Advocate Commissioner and the same was erroneously dismissed by the Court below. It is just and necessary to get additional fact for the appreciation of the appeal suit. Therefore, this petition may be allowed.

4.However, the learned counsel appearing for the respondents 1 and 2 would contend that only with an intention to drag on the proceedings, the revision petitioners have filed the present application and they are in possession of the property and making an attempt to see that the appeal suit is also allowed in their favour. Therefore, it is not necessary to appoint an Advocate Commissioner. The suit was filed by the revision petitioners herein and the same was decreed in their favour. Now, the respondents 1 and 2 herein are only filed the present Appeal Suit challenging the Judgment passed by the Court below.

5. It is not in dispute that the suit was decreed in favour of revision petitioners. However, they have filed the application for appointment of an Advocate Commissioner to prove their further case, the question of appointment of Advocate Commissioner does not arise, as the suit was decreed in their favour. It is for the



appellate Court to decide about the correctness of the order passed by the Court below. Such being the case, it is for the respondents to file an application for appointment of an Advocate Commissioner if necessary. Further, it is not for the revision petitioners / plaintiffs to file such an application, when they already won the case before the trial court. Even if the contention of the petitioners is accepted, that would only lead to collection of further evidence. The relief sought for by the revision petitioners herein cannot be permitted. Therefore, the Court below after considering all the facts and circumstances of the case has rightly rejected the application filed by the revision petitioners. Therefore, this Court is of the view that this Civil Revision Petition is liable to be dismissed and accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

6. Since the appeal suit is of the year 2007, this Court directs the Court below to dispose of the appeal suit in A.S.No. 13 of 2007 as expeditiously as possible, in any event, not later than four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

The II Additional Subordinate Judge,
Nagercoil.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-96668[F] 07/11/2019)

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06.11.2019

trp

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