



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.06.2019

CORAM:

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

C.R.P. (PD) (MD) No.1266 of 2013

and

M.P. (MD) No.1 of 2013

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1.Ganapathy Naicker
2.Subbaiah @ Shanmugasundaram
3.Atchammal

... Petitioners

Vs.

1.Perumalsamy
2.Uthirappa Naicker
3.Nagaraj

... Respondents

PRAYER: The petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.806 of 2011 in O.S.No.167 of 2011 dated 10.12.2012 on the file of the District Munsif Court, Kovilpatti.

For Petitioners : Mr.F.X.Eugene
For Respondents : Mr.R.Govindaraj

ORDER

This Civil Revision petition is filed challenging the order passed by the Trial Court in closing the Commissioner application.

2.Heard both sides.

3.It is seen that the petitioners herein are the plaintiffs filed a suit in O.S.No.167 of 2011 on the file of the District Munsif Court, Kovilpatti for declaration and mandatory injunction. It is further seen that the petitioners have filed an application for appointment of Advocate Commissioner to survey and measure the suit property. Though the Advocate Commissioner along with Surveyor went to the suit property and sought to measure, they found that there was no sub-division of the properties referred to in the survey number and therefore, it cannot be measured. Accordingly, they filed the report before the Trial Court. Based on such report, the Trial Court closed the application on the reason that the petitioners had not taken proper steps to measure the property with proper documents.

4.According to the learned counsel for the petitioners unless the Advocate Commissioner survey and measure the suit property with the help of Taluk Surveyor, the Trial Court will not be in a position to decide the lis between the parties in a just and proper manner.



5. On the other hand, learned counsel for the respondents submitted that in the absence of sub-division, the Advocate Commissioner or the Taluk Surveyor will not be in a position to measure the properties.

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6. Considering the facts that the suit is of the year 2011 and that too one for declaration and mandatory injunction, further considering the fact that the Trial Court has only closed the application by observing that the plaintiffs have not taken proper steps with proper documents to measure the property, it is for the petitioners to approach the Trial Court and file a fresh application for appointment of Advocate Commissioner with proper documents. If any such application is filed with necessary documents, the Trial Court will consider the same and pass orders on merits and in accordance with law, provided the suit is still pending.

7. With the above observation, the Civil Revision petition is disposed of. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

nbj

To

The District Munsif Court, Kovilpatti.

+ 1 CC To Mr. F. X. Eugene, Advocate in SR.No. 67835

+ 1 CC to Mr. R. Govindaraj, Advocate in SR.NO. 67957

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