



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.2721 of 2012

and

M.P. (MD)No.1 of 2012

1.Rajakumari

2.Amutha

3.R.Arul

... Petitioners/Respondents/Defendants

vs.

K.Nagarajan

...Respondent/Petitioner/Plaintiff

PRAYER: This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.64/12 in O.S.No.155/08 dated 23-08-12 on the file of the Principal District Munsif cum Judicial Magistrate Court, Nanguneri.

For Petitioners : Mr.H.Arumugam

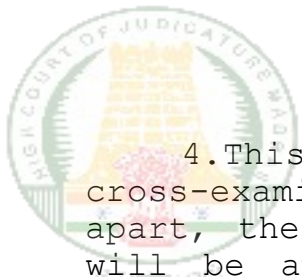
For Respondent : No appearance

ORDER

The suit is laid for declaration of title and for recovery of possession, in which trial has commenced. After examination of plaintiff side witnesses was completed, followed by that, on the side of the defendants three witnesses have been examined. After the cross-examination of D.W.3, the plaintiff has filed I.A.No.64 of 2012 in O.S.No.155 of 2008 for appointing a Commissioner for local inspection of the suit property. By the impugned order this was allowed.

2.The learned counsel for the revision petitioners/defendants submitted that the petition for appointing a Commissioner was filed so belatedly as to fill up the lacuna or otherwise in the evidence and it is intended to affect the evidence already available on record.

3.This Civil Revision Petition is filed under Article 227 of the Constitution of India and this Court is conscious that every trial Court is vested with certain procedural discretionary in administering justice. Unless, it is demonstrated that the judicial discretion procedurally vested in the trial Court by the procedural law is exercised perversely or unfairly so as to prejudice the substantial right of any of the parties, this Court may not interfere with such orders.



4.This apart, parties will have a right to file objection or to cross-examine the Commissioner, when he files the report. This apart, the Commissioner's report is only a piece of evidence that will be available to the Court and the Court has to read the Commissioner's report alongside the other evidence available on record. So looking from this angle, this Court does not find that the revision petitioners/defendants would be prejudiced by the impugned order in any manner whatsoever.

5.Therefore, this Court does not find any merit in the Civil Revision Petition and accordingly, this petition is dismissed and the fair and decretal order passed in I.A.No.64 of 2012 in O.S.No.155 of 2008 dated 23.08.2012 on the file of the Principal District Munsif cum Judicial Magistrate Court, Nanguneri is upheld. No costs. Consequently, the connected miscellaneous petition is closed.

6.Since the suit is pending before the trial Court since 2008, the trial Court is required to direct the Commissioner to complete his job as expeditiously as possible with the help of a Taluk Surveyor. In this regard, the learned Principal District Judge, Tirunelveli is directed to communicate to the District Collector, Tirunelveli to make available a Taluk Surveyor to assist the Commissioner at the very earliest. Once the Commissioner's report is filed, the trial Court is required to dispose of the case within a period of 4 months from thereof.

Sd/-

Assistant Registrar (co)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The learned Principal District Judge,
Tirunelveli.

2.The learned Principal District Munsif
cum Judicial Magistrate, Nanguneri.

+1 CC to Mr.H. ARUMUGAM, Advocate (SR-16169[F] dated 08/09/2020)

+1 CC to Mr.R.T. ARIVIKUMAR, Advocate (SR-16463[F]dated 10/09/2020)

C.R.P. (PD) (MD)No.2721 of 2012

and

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VB (14.09.2020) 2P 5C

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