



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

CRP (NPD) (MD) No.1742 of 2016

and

CMP (MD) No.8434 of 2016

1. P.T.Moorthy

2. Mohan Raj ... Petitioners/Petitioners/Respondents

versus

1. Thavamani (died)

2. Anandhan

3. M.Bhuvaneswari

4. A.Venkatesan

5. K.Saradhadevi ... Respondents/Respondents/Appellants

(R3 to R5 are brought on record as
Legal heirs of the deceased 1st
respondent, vide order dated 27.09.2018
made in CMP(MD)No.9889 of 2016)

Civil Revision Petition filed under Article 227 of the
Constitution of India, against the fair and decreetal order dated
22.03.2016 in I.A.No.26 of 2016 in A.S.No.71 of 2015 on the file of
the Subordinate Judge, Dindigul.

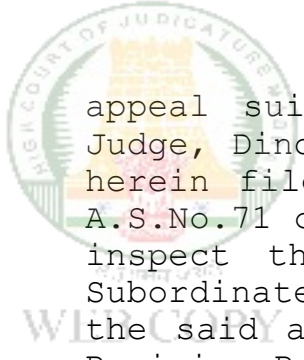
For Petitioners : M/s.S.Ravi

ORDER

This Civil Revision Petition has been filed against the order
dated 22.03.2016 passed in I.A.No.26 of 2016 in A.S.No.71 of 2015 by
the learned Subordinate Judge, Dindigul.

2. The petitioners herein filed a suit in O.S.No.30 of 2013
before the District Munsif Court, Nilakottai, for bare injunction.
The learned District Munsif, Nilakottai, by Judgment and Decree
dated 04.08.2015, decreed the suit in favour of the plaintiffs.
Aggrieved over the same, the respondents 1 and 2 herein filed an

<https://hcservices.ecourts.gov.in/hcservices/>



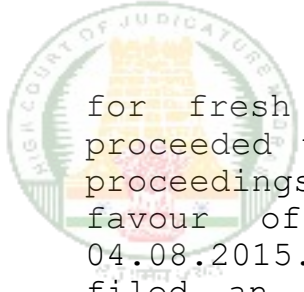
appeal suit in A.S.No.71 of 2015 before the learned Subordinate Judge, Dindigul. During the pendency of the appeal, the petitioners herein filed an interlocutory application in I.A.No.26 of 2016 in A.S.No.71 of 2015 seeking appointment of an Advocate Commissioner to inspect the suit property and submit a report. The learned Subordinate Judge, Dindigul, by order dated 22.03.2016, dismissed the said application. Aggrieved over the same, the present Civil Revision Petition has been filed.

3. The learned counsel for the petitioners submitted that though the suit in O.S.No.30 of 2013 was decreed in favour of the petitioners/plaintiffs, in the appeal suit, the petitioners/plaintiffs wanted to establish the extent of property, for which, the Commissioner has to inspect the property and to file a report, which will be helpful to decide the appeal.

4. The learned counsel for the respondents submitted that even during the pendency of the trial, the plaintiffs/petitioners herein filed two interlocutory applications, viz., I.A.No.136 of 2013 seeking the relief of ad-interim injunction and I.A.No.202 of 2003 seeking for appointment of an Advocate Commissioner, wherein, the learned trial Judge granted an order of interim injunction and also allowed the application for appointment of Advocate Commissioner. Challenging the same, the respondents 1 and 2 herein filed CRP(MD) Nos.1307 and 1308 of 2013. This Court, by order dated 10.03.2014, allowed the revision petitions and remitted the matters back to the trial Court with a direction to dispose of the same on merits and in accordance with law. Thereafter, the petitioners herein had not taken any steps to proceed with the applications till the disposal of the suit. However, the suit was decreed in favour of the petitioners. The learned counsel further submitted that in the appeal suit, even after filing vakalat, the petitioners kept quiet and when the appeal suit was posted for arguments, the petitioners herein have filed this application, in order to drag on the proceedings. The learned Subordinate Judge, Dindigul, after considering all the materials, has rightly dismissed the application and therefore, no interference is required.

5. Heard both sides and perused the records.

6. Admittedly, the petitioners herein filed O.S.No.30 of 2013 before the District Munsif Court, Nilakkottai, seeking the relief of bare injunction. During the pendency of the trial, the petitioners herein filed two applications before the trial Court, viz., I.A.No.136 of 2013, seeking ad-interim injunction and I.A.No.202 of 2013 seeking appointment of an Advocate Commissioner to inspect the suit property and the said applications were allowed. Challenging the same, the respondents 1 and 2 herein filed CRP(MD) Nos.1307 and 1308 of 2013 before this Court. This Court, vide order dated 10.03.2014, allowed the petitions by setting aside the orders passed by trial Court and remitted the matters back to the trial Court



for fresh consideration. Thereafter, the petitioners had not proceeded with the said application further and went on the suit proceedings and after a full-fledged trial, the suit was decreed in favour of the petitioners, vide Judgment and Decree dated 04.08.2015. Aggrieved over the same, the respondents 1 and 2 herein filed an appeal suit in A.S.No.71 of 2015 before the learned Subordinate Judge, Dindigul. When the Appeal Suit was listed for arguments, the petitioners had filed this application, viz., I.A.No.26 of 2016 for the very same relief, i.e for appointment of Commissioner. The Appellate Court, after considering all the materials, has dismissed the application. Challenging the same, the present Civil Revision Petition has been filed.

7. On a perusal of records, it is seen that the suit in O.S.No.30 of 2013 was filed by the petitioners herein only for bare injunction and in the plaint itself, they have specified the schedule of property. During the pendency of the suit, the petitioners herein filed two applications, namely, one for ad-interim injunction and another one for appointment of Advocate Commissioner that were also allowed by the trial Court, against which, the respondents 1 and 2 herein filed CRP(MD)Nos.1307 and 1308 of 2013, wherein, this Court allowed the said revision petitions and remitted the matters back to the trial Court for fresh consideration on merits. Thereafter, the petitioners herein have not proceeded with the said applications. However, after the trial, the suit was ended in favour of the petitioners/plaintiffs. Aggrieved over the same, the respondents 1 and 2 herein filed an appeal suit in A.S.No.71 of 2015 before the learned Subordinate Judge, Dindigul. In the appeal suit, the petitioners after filing vakalat had not moved any application, but, when the appeal suit was posted for arguments, they had moved an application for appointment of Advocate Commissioner, which shows the intention of the petitioners herein that they have filed this application with an intention to drag on the proceedings.

8. It is well settled proposition of law that in the suit for bare injunction, there is no need for appointment of an Advocate Commissioner to collect the material evidence in order to establish their case.

9. Under these circumstances, this Court does not find any merits in the Civil Revision Petition and therefore, the revision petition is liable to be dismissed.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.



11. Since the Appeal Suit is pending from 2015, the learned Subordinate Judge, Dindigul, is directed to dispose of A.S.No.71 of 2015 on merits in accordance with law, on or before 30.04.2020.

12. Post the matter on 30.04.2020 for reporting compliance.

Sd/-

Assistant Registrar(CS)

// True Copy //

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Sub Assistant Registrar(CS)

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To

1. The Subordinate Judge,
Dindigul.

+1 CC to M/s.H.LAKSHMI SHANKAR, Advocate (SR-10314[F] dated 06/03/2020)

CRP (NPD) (MD) No.1742 of 2016

05.03.2020

DB (CO)

TR(10.03.2020) 4P 3C