



C.R.P.(PD)No.3635 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3635 of 2016
and C.M.P.No.18525 of 2016

1.Cannapan

2.Devaraja @ Rajagopal

.. Petitioners

Vs.

Dhanasekaran

.. Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.06.2016 made in I.A.No.223 of 2016 in O.S.No.466 of 1996 on the file of the Principal District Munsif Court, Pondicherry.

For Petitioners : Mrs.P.Veena Suresh

For Respondent : Not ready in notice

ORDER



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Civil Revision Petition is filed against the fair and decretal order dated 22.06.2016 made in I.A.No.223 of 2016 in O.S.No.466 of 1996 on the file of the Principal District Munsif Court, Pondicherry.

2.The petitioners are the plaintiffs and respondent is the defendant in O.S.No.466 of 1996 on the file of the Principal District Munsif Court, Pondicherry. The petitioners filed the said suit for declaration and possession. Originally, the suit was dismissed on 29.10.1999. The petitioners filed A.S.No.88 of 2000 challenging the said judgment and decree. The learned First Appellate Judge after framing additional issues, remanded the suit with a direction to the petitioners to apply for appointment of Advocate Commissioner. After remand, the petitioners filed I.A.No.953 of 2003 for appointment of Advocate Commissioner. The learned Judge by the order dated 21.02.2005 appointed Advocate Commissioner to measure the suit property along with the help of surveyor. Subsequently, at the instance of the petitioners, the warrant issued to the Advocate Commissioner was amended and amended



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warrant was issued on 06.03.2013. As per amended warrant, the Advocate Commissioner and surveyor measured the suit property and filed report. The petitioners filed objections to the report on 12.03.2014 and filed present I.A.No.223 of 2016 in O.S.No.466 of 1996 under Order XXVI Rule 1 read with Section 151 of Civil Procedure Code for an order of issuing summons to the Advocate Commissioner and Director of Survey Department to depute the surveyor to appear before the Court to produce the document and to give evidence.

3.According to the petitioners, as regards measurement and location of suit property, it becomes necessary to examine the surveyor. The respondent filed counter affidavit and stated that the petitioners have filed present application only to drag on the proceedings as Commissioner's report is not in their favour. The petitioners filed two objections to the Commissioner's report. The affidavit filed by the petitioners is bereft of particulars, vague and no reason given by them for issuing summons to the Advocate Commissioner, surveyor and prayed for



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dismissal of the said I.A.

4.The learned Judge considering the averments in the affidavit and counter affidavit, dismissed the application holding that the petitioners have not stated any specific reason as to why the witness to be summoned and examined.

5.Against the said fair and decretal order dated 22.06.2016 made in I.A.No.223 of 2016 in O.S.No.466 of 1996, the petitioners have come out with the present Civil Revision Petition.

6.Heard the learned counsel appearing for the petitioners and perused the entire materials on record.

7.From the materials on record, it is seen that in the appeal filed by the petitioners, the learned First Appellate Judge by the judgment and decree dated 24.01.2003, set aside the judgment and decree passed in



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O.S.No.466 of 1996, framed additional issues and remanded the suit to the trial Court for fresh disposal of the suit. The Appellate Court has given liberty to the petitioners and respondent to let in additional evidence. The Appellate Court also directed the petitioners to apply for appointment of Advocate Commissioner to measure the suit property. On the application filed by the petitioners in I.A.No.953 of 2003, the Advocate Commissioner was appointed by the order dated 21.02.2005. The Advocate Commissioner along with surveyor inspected, measured the property and filed his report. At the time of inspection, the 2nd petitioner was present along with Advocate Commissioner and he assisted the Advocate Commissioner to execute the warrant. At the instance of the petitioners, warrant of Commission was amended. Again Advocate Commissioner inspected the property along with surveyor and filed his report. The petitioners filed two objections to the reports of the Advocate Commissioner. After filing such objections, the petitioners have filed present I.A. to issue summons to the Advocate Commissioner and to direct the Director of Survey Department to depute surveyor to appear



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before the Court to produce the document and to give evidence. The petitioners, in the affidavit filed in support of the above application except stating that as regards to measurement and location of the suit property, it becomes necessary to examine the surveyor, have not given any reason as to why evidence of the Advocate Commissioner as well as surveyor is necessary. The affidavit filed by the petitioners is vague and bereft of particulars. The Advocate Commissioner has already inspected and measured the suit property with the help of Surveyor in the presence of 2nd petitioner and filed his report. The petitioners have filed two objections to the reports of the Advocate Commissioner. It is for the petitioners to bring it to the notice of the Court, the objections filed by them to the reports of the Advocate Commissioner and the learned Judge will consider the report and objections and pass orders in the judgment.

8.It is well settled that report of the Advocate Commissioner is only to assist the Court. It is for the Court to consider the same while deciding the issue and pass appropriate orders. As per Order XXVI Rule 10(2) of



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C.P.C., the Advocate Commissioner may be examined in the open Court with regard to his report or with the permission of the Court by any of the parties to the suit. In the present case, the petitioners have filed present I.A. for examination of the Advocate Commissioner as well as surveyor. The learned Judge considering the materials placed before him, rejected the request of the petitioners to examine the Advocate Commissioner. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9.For the above reasons, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes/No
Internet: Yes/No
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V.M.VELUMANI,J.



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To

The Principal District Munsif
Pondicherry.

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