



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07.2021

Coram

The Hon'ble Mr. Justice C.V.KARTHIKEYAN

C.R.P.No.1370 of 2020

and

C.M.P.No.7873 of 2020

Nagammal (Died)

1.Rajendiran

2.Rajeshwari,

3.Ramamurthy

4.Neeladevi

5.Mayilsamy

... Petitioners/Petitioners/Plaintiffs

Vs

1.Selvam

2.Palaniammal

3.Mani (Family Manager)

... Respondents/Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal dated 20.01.2020 made in I.A.No.1093 of 2016 in O.S.No.135 of 2012 on the file of the Court of District Munsif, Gobichettipalayam.

For Petitioners : Mr.M.Guruprasad

For Respondents : Mr.N.Manoharan

ORDER

Heard the learned counsel for the revision petitioners and the learned counsel for the respondents.

2.The Revision Petition arises from the order passed in I.A.No.1093 of 2016 dated 20.01.2020. The said Interlocutory Application has been filed under Order XXVI Rule 9 of CPC seeking to appoint an Advocate Commissioner to visit the suit property with the help of a Surveyor. This application has been filed in O.S.No.135 of 2012. The suit is now pending for nearly



a decade. The suit had been filed for declaration of easementary right and for permanent injunction.

3. It is the claim of the plaintiffs that the defendants had damaged the pathway and stone structure and also the ridges by using a JCB and had allegedly damaged the pipeline in the common area. The plaintiffs in fact filed I.A.No.516 of 2012 seeking appointment of an Advocate Commissioner. An Advocate Commissioner was also appointed and a report had also been filed.

4. From the records it is seen that the petitioners filed I.A.No.592 of 2013 again under Order XXVI Rule 9 of CPC for appointment of an Advocate Commissioner. That Application was dismissed and an Appeal was filed in C.M.A.No.1 of 2014 which was withdrawn as not pressed. Thereafter, again the present application in I.A.No.1093 of 2016 was filed again seeking appointment of an Advocate Commissioner.

5. A perusal of the order of the learned District Munsif, Gobichettipalayam, reveals the frustration under which the learned District Munsif, Gobichettipalayam, has been put to by the repeated filing of applications for appointment of an Advocate Commissioner.

6. The Advocate Commissioner is an officer of the Court to assist the Court to find out the nature of the property and for such other purposes. But appointing commissioner again and again would not serve any purpose. It would be akin to inviting the Court to pass orders on the same Interlocutory Application again and again even though orders had been passed. This procedure is not permissible and should not be encouraged.

7. The petitioners should also seek to set aside the earlier report of the Advocate Commissioner and give reasons why it should be set aside and thereafter, for valid and cogent reasons seek appointment of an Advocate Commissioner. A Commissioner cannot be appointed to suit the convenience of the parties. The plaintiffs will have to establish the right they claim. Only thereafter will further issues arise. It all depends on the evidence of the plaintiffs. The evidence of the Advocate Commissioner is only to assist the Court and not the plaintiffs. It is seen that since there is already a report on record. It would only be advisable that, without any delay, the plaintiffs graze the witness box and tender evidence and subject themselves for cross-examination. Further delay would only invite filing further applications for appointment of an Advocate Commissioner, which appears to be an habit of the plaintiffs. This cannot be permitted.

8. I find no reasons to interfere with the orders passed and



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

9.If Interlocutory Applications are not filed and if issues have been framed and whenever the matter is posted in the Special List and whenever the plaintiffs finally decide to graze the witness box, then from that date provided no further applications are filed by either of the parties, the learned District Munsif, Gobichettipalayam, may endeavour to dispose of the suit within a period of four months from the first date of recording of evidence, again provided no Interlocutory Applications are filed and there is free flow of the trial of the case.

Sd/-
Assistant Registrar (CCC)

// True Copy//

Sub Assistant Registrar

smv

To:-

The District Munsif Court,
Gobichettipalayam.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.32531

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.32650 [05/05/2022]

C.R.P. (PD) No.1370 of 2020

KV(CO)
SU(09/08/2021)