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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P.No.1832 of 2021
and

C.M.P.No.14280 of 2021

- 1.J.Y.Venkatesh, M/56,
Son of J.Yellappa,
- 2.Krishnaveni, F/54,
Wife of J.Y.Venkatesh,
- 3.Karthik Raj, M/34,
Son of J.Y.Venkatesh,
- 4.Jayanth Kumar, M/32,
Son of J.Y.Venkatesh,

All are residing at
No.3/12, Kagganur Village,
Sevangapalli Post,
Hosur Taluk, Krishnagiri District.

- 5.J.Y.Yellamma, F/50,
Wife of P.Ramachandran,
Varadapuram Village,
Shoolagiri Post,
Hosur Taluk, Krishnagiri District.

... Petitioners

.Vs.

- 1.R.Munivenkatappan, M/51,
Son of Ramaiah,
- 2.R.Prakash, M/43,
Son of Ramaiah,

Both are residing at
Kagganur Village,
Sevangapalli Post,
Hosur Taluk, Krishnagiri District.

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of
Constitution of India to strike off the appeal in C.M.A.N.2 of



2021 on the file of the Principal Subordinate Judge at Hosur against the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.141 of 2016 dated 16.02.2021 on the file of the District Munsif Court at Hosur.

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For Petitioners : Mr.R.Jayapraksh

O R D E R

This Petition is filed to strike off C.M.A.No.2 of 2021, pending on the file of the Principal Subordinate Judge, Hosur, against the order passed in I.A.No.1 of 2019 in O.S.No.141 of 2016 by the District Munsif, Hosur.

2.Learned counsel for the Petitioner submitted that the Respondents filed Suit against the Petitioners for the relief of declaring the right, title and interest to the suit properties, permanent injunction and for recovery of possession. Petitioner filed an application under Order XXVI Rule 9 of CPC in I.A.No.1 of 2019 for inspecting the suit properties by an Advocate Commissioner along with Surveyor. The said Petition was contested by the Respondents. Considering the rival submissions, the learned District Munsif, Hosur allowed the same and appointed an Advocate Commissioner to inspect the suit property along with Village Administrative Officer and Taluk Surveyor and ordered to file a report before the Court.

3.It is further submitted by the learned counsel for the Petitioners that the Respondents instead of filing a revision Petition against the order passed in I.A.No.1 of 2019, filed C.M.A.No.2 of 2021. The order passed in the application filed under Order XXVI Rule 9 of CPC is not an appealable order. Therefore, C.M.A.No.2 of 2021 has to be struck off.

4.Notice was ordered to the Respondents in this Civil Revision Petition. Notice was also served on the Respondents and their names are also printed in the causelist. When the matter came up for hearing on 07.10.2021, this Court has directed the Registry to verify as to whether any advocate entered appearance for the Respondents. When the matter is taken up today, it is represented that no one filed vakalat for the Respondents.

5.Considering the limited scope of the CRP, this Court proceeds to pass orders, without going deep into the merits of the case.



6.The Suit was filed for declaration of title, permanent injunction and recovery of possession by the Respondents. Petitioner also claimed right, title and interest in the suit property. The learned counsel for the Petitioner claimed that they got decree in O.S.No.346 of 1986 in their favour. It is submitted by him that there is some confusion with regard to the survey numbers of the Suit property. Therefore, it is necessary for appointing an Advocate Commissioner and measure the property alongwith the Village Administrative Officer and Surveyor to clarify the issue and for proper and correct adjudication of the matter. The aforesaid reason stated by the learned counsel for the Petitioner, in the considered view of this Court, can be accepted for the appointment of Advocate Commissioner to inspect and measure the suit property with the help of Village Administrative Officer and Surveyor.

7.Be that as it may, if really the Respondents had aggrieved against the order of appointing the Advocate Commissioner, they ought to have filed CRP and not CMA, for the reason that the order passed under Order XXVI Rule 9 of CPC is not an appealable order. In this view of the matter, this Court has no option, except to strike off the C.M.A.No.2 of 2021, pending on the file of the Principal Subordinate Judge, Hosur. At the same time, liberty is granted to the Respondents, if so advised, to work out their remedy in the manner known to law. In that event, the time spent on this CRP is excluded for the consideration of limitation. Accordingly, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sai

To

The learned Subordinate Judge,
Hosur.

+1CC to Mr.R.Jayaprakash, Advocate, Sr.No.53986

CRP.No.1832 of 2021

PL (CO)

K.RK. (10.11.2021)