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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)NO.2965 OF 2021

AND

CMP.NO.21202 OF 2021

1.V.Ranjitham

2.N.Radhamani

3.V.Rangaraj

4.M.Nataraj Gounder

..Petitioners

Vs.

1.M.Shanmugam

2.M.Ponnusamy

3.V.Rathinam

4.N.Rajamani

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated 12.11.2021 in IA.No.2 of 2021 in IA.No.1502 of 2018 in OS.No.358 of 2018 on the file of the Additional District Munsif Court, Pollachi.

For Petitioners : Mr.A.Sivaji

O R D E R

Challenge in this revision is to the order of the Trial Court, directing re-issue of warrant to the Commissioner, require him to inspect the property again, after giving notice to the parties and file his report.



2.The suit relates to a easementary right over a pathway. Along with the suit, an application in IA.No.1502 of 2018 was filed and an exparte order appointing a Commissioner was passed by the Trial Court. The order specifically directed the Commissioner to serve notice on the respondents and thereafter, inspect the property. Contending that the Commissioner inspected the property without notice to the respondents, the respondents came up with an application for re-issue of warrant and a revisit.

3.The petitioners herein resisted the said application contending that the respondents herein were represented at the time of inspection. The Trial Court, from the report of the Commissioner, found that the respondents in IA.No.1502 of 2018 were not served with notice on the intended inspection by the Commissioner at any point of time. The Trial Court also recorded a finding that even in the report of the Commissioner neither the signature of the respondents in IA.No.1502 of 2018 nor their counsel were there, acknowledging the receipt of notice. Therefore, the Trial Court held that the Commissioner ought not to have inspected the property without issuing notice to the respondents and directed re-issue of warrant to re-inspect the property.

4.Mr.A.Sivaji, learned counsel appearing for the petitioner would vehemently contend that the respondents were present at the time of inspection and refused to receive the notice. The said statement is not reflected in the Commissioner's report. No acknowledgement has been produced by the Commissioner to show that the notice was served on the respondents before inspection.

5.While the Court has a power to appoint an exparte Commissioner, the Commissioner shall not inspect the property without notice to the parties. I therefore, do not see any illegality or irregularity in the order of the Trial Court, allowing the application for re-inspection on the ground that the inspection was made without notice. This civil revision petition therefore, fails and it is accordingly, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

kkn



To

The Additional District Munsif Court,
Pollachi.

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+1cc to M/s.A.Sivaji, Advocate, S.R.No.69117

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CP (CO)
RLP (12/01/2022)