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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.01.2021
DELIVERED ON : 19.08.2021
CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.1730 of 2019
and
C.M.P (MD) .No.8880 of 2019

1.S.Rengasamy

2.R.Rajesh ... Petitioners/
Petitioners 1 & 3 / Plaintiffs 1 & 3

Vs.

1.S.Elango

2.K.S.Raja

3.K.S.Kamaraj

4.Theni Allinagaram Municipality,
rep. by its Commissioner,
Periyakulam Road,
Theni Taluk. ... Respondents 1 to 4/
Respondents 1 to 4 / Defendants 1 to 4

5.C.Arivalagan ... 5th respondent/
5th respondent/ 4th Plaintiff

6.R.Manikandan ... 6th respondent /
2nd petitioner/ 2nd plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to call for the records relating to the order and decreetal order, dated 09.08.2019, made in I.A.No.81 of 2018 in O.S.No.34 of 2014 by the learned Additional District and Sessions Judge, Theni (Camp), at Periyakulam and set side the same and allow the present civil revision petition..

For Petitioner : Mr.M.Vallinayagam,
Senior Counsel for
Mr.J.Anandkumar

For 1st respondent : Mr.S.Elango
(Party-in-person)

For respondents 2 & 3 : Mr.P.Sivachandran

For 4th respondent : Mr.K.Hema Karthikeyan

For 5th respondent : Mr.S.Sekar

For 6th respondent : No appearance

**ORDER**

This civil revision petition has been filed by the petitioners/Plaintiffs 1 and 3 against the order dated 09.08.2019 made in I.A.No.81 of 2018 in O.S.No.34 of 2014 by the Additional District and Sessions Court, Theni (Camp) at Periyakulam.

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2. It is seen from the record that the 5th respondent herein/4th plaintiff had filed an application to scrap the Advocate Commissioner's report in I.A.No.103 of 2014 in O.S.No.34 of 2014, which was dismissed by the Court below and the same was confirmed by this Court on 06.02.2018 in C.R.P.(MD).No.2146 of 2016 with the following observations:

"9. Considering the grounds of revision, this Court felt that the Commissioner report have to be considered contextually, that is in the light of the oral and documentary evidence available with regard to the suit properties. The Court below has also rightly dismissed the interlocutory application filed by the revision petitioner holding that without any oral and documentary evidence, the grounds urged by the revision petitioner cannot be considered. Now, it is admitted by the revision petitioner that the Advocate Commissioner is available and hence, there is no difficulty for him to examine the Advocate Commissioner or let in evidence to satisfy that the report is faulty and the same should be scrapped. This Court is of the further view that after examination of the Advocate Commissioner and other witnesses, if the trial Court is satisfied that there is a ground for remeasuring the property, the trial Court may either reissue the commission warrant or after scrapping of the commissioner report, appoint new commissioner and call for fresh report."

3. While so, the petitioners herein / Plaintiffs 1 and 3 along with 6th respondent/2nd plaintiff have filed an application under Order 26 Rule 9 C.P.C. in I.A.No.81 of 2018 seeking to implement the order of this Court in C.R.P.(MD).No.2146 of 2016 by examining the Advocate Commissioner and to take a decision regarding reissue of warrant. The Court below has dismissed the said application on the grounds that (a) even before commencement of trial, the petitioners have filed this petition and that the petitioners therein have no *locus standi* to maintain the petition as they have filed the said application only to implement the order obtained by the 5th respondent/4th plaintiff, that too without even filing a petition to transpose the 5th respondent/4th plaintiff as one of the respondents in the petition and to drag on the proceedings. Aggrieved by the same, the petitioners/plaintiffs 1 and 3 have filed this revision petition.



4. The learned senior counsel appearing for the petitioners/plaintiffs 1 and 3 would submit that the learned Advocate Commissioner without ascertaining the conflicts in the measurement from the detailed development Map Nos.3 to 5 simply proceeded with the measurement which virtually amounts to take away the property of the petitioners and more helpful to the respondents. Therefore, the petitioners and others plaintiffs have raised objections against the report of the Advocate Commissioner and in the earlier round of litigation, this Court has given a specific direction to the plaintiffs to prove as to fault of the Commission's report and only to implement the said direction, the present interlocutory application has been filed by the petitioners / plaintiffs 1 and 3 and also the 6th respondent/2nd plaintiff. But, the Court below has erroneously dismissed the said application only on technical ground.

5. The learned senior counsel appearing for the revision petitioners would further submit that as soon as the Advocate Commissioner filed a report and objections were filed, the Court below should allow the parties to cross examine the Advocate Commissioner. Without permitting to cross examine the Advocate Commissioner, the Court below has posted the case for trial and if the trial is commenced without permitting to cross examine the Advocate Commissioner, the petitioners' right would be affected. Hence, the order passed by the Court below may be set aside and this revision petition may be allowed.

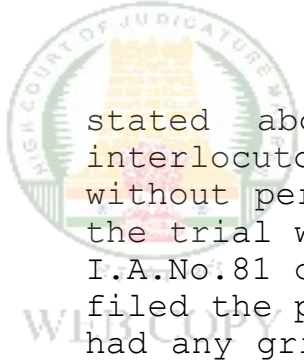
6. The first respondent / party-in-person and the learned counsel appearing for the respondents 2 to 4 are in unison submitted that only to drag on the proceedings and without any *locus standi*, the petitioners herein along with 6th respondent herein have filed I.A.No.81 of 2018 and that the Court below has rightly dismissed the said petition and the same need not be interfered with. Thus, they prayed to dismiss this revision petition.

7. The learned counsel appearing for the 5th respondent/4th plaintiff reiterated the submission of the learned counsel appearing for the petitioners.

8. Heard the learned counsel appearing for the parties and perused the records carefully.

9. The main contention of the petitioners is that without permitting to cross examine the Advocate Commissioner, the Court below has posted the case for trial and that if the trial is commenced without permitting to cross examine the Advocate Commissioner, the petitioners' right would be affected.

10. It is seen that the order dated 06.02.2018 passed in C.R.P.(MD).No.2146 of 2016 was despatched by this Court on 14.02.2018. The petitioners have hurriedly filed I.A.No.81 of 2018 on 23.04.2018. Admittedly, in this case, nowhere the petitioners



stated about the stage of the proceedings. Neither in the interlocutory application nor in this revision, they stated that without permitting them to cross examine the Advocate Commissioner, the trial was commenced by the Court below. The averments made in I.A.No.81 of 2018 would go to show that the petitioners therein have filed the petition only to drag on the proceedings. If really, they had any grievance in the procedure adopted by the Court below, they could have sought prayer to rectify the same. But, they have not done so. However, considering the submission of the learned senior counsel for the petitioners and in order to avoid wrong interpretation on the observations made by this Court in the earlier revision petition, this Court is inclined to say that whenever an objection is raised on a report of the Advocate Commissioner, it is the duty of the trial Court to enter a finding regarding the same before asking the parties to let in evidence on the merits of the case. For the purpose of substantiating their objections to the report, probably examination of the Commissioner alone may not be sufficient and parties may also have to be examined. Only after taking such steps and after arguments, the Court must enter into a finding on the report already filed and the aggrieved party can insist upon issuing a second commission or remit the warrant to the same commissioner for curing the defects made mention of in the objections. It is also to be noted that if the Court is satisfied that the report is not satisfactory, it need not insist on the parties to file an application for the issue of a second commission. The Court itself could give a direction to the Commissioner how to implement the warrant of appointment and how the work has to be done.

11. It is needless to say that the procedures to be followed by the trial Court as to the report of the Commissioner was dealt with in the case of **Vemba Gounder Vs. Pooncholai Gounder, reported in (1996) 1 MLJ 426**. The same must be followed by the trial Court.

12. With the above observations, this Civil Revision Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

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/ /2021

Sub Assistant Registrar(CS)

gcg

To

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

1. The Additional District and Sessions Judge,
Theni (Camp) at Periyakulam.



2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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C.R.P (MD) No.1730 of 2019
19.08.2021

MGJ(01.09.2021) 5P 4C