



WEB COPY



C.R.P.(PD)No.1142 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.04.2022

CORAM:

MR. JUSTICE N.SESHASAYEE

C.R.P.(PD)No.1142 of 2022
and C.M.P.No.5951 of 2022

1.Chinnusamy
2.Arun
3.Ramesh
4.Kandasamy
5.Saravanan
6.Ayyandurai
7.Dhanapal

...Petitioners

Vs.

Sumathi

...Respondent

Prayer: This Civil Revision petition is filed under Article 227 of the Constitution of India, to set aside the Docket order dated 24.03.2021 passed in I.A.No.3 of 2021 in O.S.No.53 of 2021 on the file of the Principal District Munsif Court, Mettur.

For Petitioners : Mr.M.Mariappan

ORDER

The plaintiff has laid a suit for bare injunction and the defendant claims possessory right over the same. In the plaint, the plaintiff has taken out I.A.No.3 of 2021 for appointing a commission. The Court has indeed appointed a



commission vide its order dated 24.03.2021. This Court is informed that the commissioner has not filed his report yet. The defendant has now challenged this order on the ground that the commission was appointed without notice to the defendant.

2.Appointment of a Commission *per se* does not affect the substantive right of the parties either vis-a-vis the cause of action nor any procedural right of defending the suit. The Court is well within its powers to appoint a Commission *exparte*. What however is mandatory is, that the commissioner should visit the property only after issuing due notice to both the parties. Even if the Commissioner chooses to visit the property without notice to one of the parties, due to certain emergencies, yet it is obligatory on the part of the Commissioner to issue notice to the other party. This Court is informed that the Commissioner has not issued any notice to the defendant.

3.This Court does not find any need to interfere with the order of the trial Court. However, given the statement made by the counsel that the defendant has not been served with a notice of local inspection by the commissioner is concerned, the trial Court is now directed to look into the same and ensure that the procedure as contemplated in law is strictly complied with.



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4. With the above direction, this Civil Revision Petition is disposed of at the admission stage itself. Consequently, the Connected Miscellaneous Petition is closed. No cost.

13.04.2022

kas/dk

Index : Yes/No

Internet : Yes/No

Speaking/Non speaking order

To

The Principal District Munsif Court,
Mettur.



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N.SESHASAYEE,J.

kas/dk

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