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C.R.P.(PD).No.1669 of 2022 and
C.M.P.No.8314 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.06.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

C.R.P.(PD).No.1669 of 2022 and
C.M.P.No.8314 of 2022

1.Chinnasamy

2.Palaniyammal

... Petitioners

Vs.

Chinnasamy

...

Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 20.11.2021 in I.A.No.01 of 2021 in O.S.No.287 of 2014, on the file of the learned Principal Subordinate Judge, Dharmapuri.

For Petitioners : Mr.R.Selvakumar

ORDER

This civil revision petition has been preferred to set aside the order dated 20.11.2021 in I.A.No.01 of 2021 in O.S.No.287 of 2014, on the file of the learned Principal Subordinate Judge, Dharmapuri.



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2. Heard the learned counsel for the petitioners.

3. The revision petitioners are the plaintiffs in the suit. During the pendency of the suit, the Commissioner was appointed in order to visit the suit property and to file a report. The Commissioner visited the suit property along with the help of the Surveyor and filed his report. The revision petitioners have once again filed a petition in I.A.No.741 of 2019, for the revisit of the suit property by the Commissioner with the help of VAO and Surveyor. The said petition was allowed, however, no help of VAO or Surveyor was given once again to the Commissioner. Aggrieved over that, the petitioners filed a review petition to the very same Court in I.A.No.1 of 2021 in O.S.No.287 of 2014 and the same was dismissed. Aggrieved over the same, this civil revision petition has been filed.

4. The learned counsel for the petitioners submitted that the learned Trial Judge had allowed the petition for re-visit of the Commissioner in order to once again measure the suit property to find out the encroachment, if any, made in the suit property in various survey numbers. It is further submitted



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that the Commissioner's report and the sketch also reveals that there are encroachments. The report or sketch filed by the Commissioner or Surveyor accompanying the Commissioner, would form part of the records.

5. On perusal of the plaint filed by the petitioners, it is seen that the suit was filed for the relief of declaration and permanent injunction. The revision petitioners / plaintiffs did not seek any prayer with regard to the alleged encroachment, despite it is now submitted that the Commissioner's report itself shows about the encroachment.

6. The learned Trial Judge has also observed in his order made in I.A.No.01 of 2021 that in the absence of any relief sought for with regard to the alleged encroachment, the Commissioner need not be given with the help of the Surveyor and VAO, in order to re-measure the property. Admittedly, no prayer for mandatory injunction or for recovery of possession is made in the suit. So, it is right for the learned Trial Judge to disallow the petition seeking the help of the Surveyor with a direction to re-measure the property as sought by the petitioners. It is settled law that the Commissioner cannot be appointed for the purpose of collecting evidence in order to seek further reliefs through



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future amendment to the plaint. The learned Trial Judge has rightly dealt the application filed to revisit the suit property and passed an appropriate order. In my view, it does not require any revisit and the learned Trial Judge has rightly dismissed the review application as well.

7. Hence, I find no reason for entertaining this civil revision petition and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking / Non Speaking Order
gsk



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To
The Principal Subordinate Judge,
Dharmapuri.



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R.N.MANJULA, J

gsk

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