



C.R.P(NPD).No.3607 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2022

C O R A M:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(NPD). No.3607 of 2017
and C.M.P.No.16884 of 2017

1.Kanni Gounder
2.Kothandapani

... Petitioners

Vs.

Deivamurthy

... Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code, against the fair and decreetal order dated 11.08.2017 in I.A.No.59 of 2015 in A.S.No.10 of 2014 on the file of Sub Ordinate Court, Ginjee.

For Petitioners : Mr.G.Rajan

For Respondent : Mr.B.Jawahar



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ORDER

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This Civil Revision Petition has been filed against the order dated 11.08.2017 in I.A.No.59 of 2015 in A.S.No.10 of 2014 on the file of the Sub Ordinate Court, Ginjee.

2.The respondent herein had filed the suit in O.S.No.234 of 2009 and the same was decreed in his favour. Against which the petitioners herein /appellants/defendants filed appeal suit in A.S.No.10 of 2014.

3. The contention of the revision petitioners herein/defendants is that the defendant filed I.A.No.2191 of 2011 on the date of judgment passed in the suit in O.S.No.234/2009 for appointment of Advocate Commissioner to see the existence of the property and to file the report. After due inspection, the Advocate Commissioner submitted his report as per the warrant of Commission. The only grievance of the petitioners is that the Trial Court has not given opportunity to the defendants. Therefore, the petitioner filed an application in I.A.No.59 of 2015



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during the pendency of appeal suit, to appoint an Advocate Commissioner, to survey the property with the help of surveyor and to submit a report. The learned Judge had dismissed the said application on the ground that there is no valid reason given for second commission and the appointment of Commissioner in appeal proceedings is not authorized under Order 41 Rule 27.

4. Aggrieved by the said dismissal order, the present Civil Revision Petition has been filed by the revision petitioners/appellants/defendants.

5. The learned counsel for the revision petitioners would submit that the earlier report filed by the Advocate Commissioner definitely requires a relook and reconsideration in view of the fact that the earlier report had only dealt with the physical features of the property without exact measurements and boundaries on the basis of the title documents and revenue records.



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6. The learned counsel for the respondent/plaintiff would submit that on petition filed by the defendants, an Advocate Commissioner was appointed who after inspection, filed a report. By suppressing the said facts, the defendants/appellants filed I.A.No.59 of 2015 during the pendency of the appeal suit. In such circumstances, the learned Judge, rightly dismissed the said I.A.

7. Heard both sides and perused the materials available on record.

8. A careful reading of the impugned order would go to show that the learned Judge viewed that the defendants/petitioners has not made out any defects in the report of the Commissioner and that during the pendency of the appeal suit, for the same purpose, appointment of commissioner is neither in the interest of justice nor recognized by the provisions of Order 41 Rule 27 or under Order 26 Rule 9 read with Section 107 of CPC.

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9. In the considered opinion of this court, the view taken by the learned Judge could not be construed as perverse, warranting interference of this court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.08.2022

nti/nvsri

Index:Yes/No

Speaking order/Non-speaking order

To

1.The Sub Ordinate Court, Ginjee.

2.The Section Officer, V.R.Section, High Court, Madras.

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J.NISHA BANU,J.

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