



Rev.Appl.No.254 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

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1. R.Narayanasamy

2. Subbathal

...Petitioners

Vs.

1. K.Chinna Marudhachalam

2. C.Easwaramurthy

3. R.Venkatachalam

4. Tamil Nadu Electricity Board

Rep by its Superintending Engineer,
Office at Tatabad, Coimbatore-12.

... Respondent

PRAYER: This Review Application filed under Section 114 read with order 47 rule 1 of CPC, praying to review the order dated 14.09.2022 in C.R.P.No.2775 of 2017 and Consequently dismiss the C.R.P.No.2775 of 2017.



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For Petitioners : Mr.T.Saikrishnan

For R1 and R2 : Mr.M.Sriram

For R3 and R4 : No appearance

ORDER

This review application has been filed seeking to review the order dated 14.09.2022 in C.R.P.No.2775 of 2017 and consequently dismiss the C.R.P.No.2775 of 2017.

2. The learned counsel for the petitioners submitted that the respondents 1 and 2 have already filed the CRP.No.2262 of 2015 for the very same prayer. He further submitted that this Court ought to have considered that a detailed typed set containing all the earlier proceeding and orders between the very same parties in respect of the very same subject matter of the suit had been filed by the 1st respondent in the CRP appearing as party-in-person and the consideration of the same would have shown that already the Court has held that the revision petitioners are not entitled for the declaration regarding ownership to the suit property and the same has



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been upheld by this Court in CRP.No.1991 of 1996 by order dated 06.12.1996 and in the light of the same that they do not have the locus even to pursue the A.S.No.8 of 2004 and to file application for appointment of Advocate Commissioner.

3. He further submitted that advocate commissioner was already appointed pending the suit and visited the suit property and filed his report before the trial Court and after considering the report and evidence placed before the trial court, the trial Court correctly dismissed the suit in O.S.No.228 of 1995 filed by the respondents 1 and 2 and decreed the suit in O.S.No.1902 of 1997 filed by the petitioners along with the 3rd respondent herein. He also further submitted that the respondents 1 and 2 already filed an application in I.A.No.198 of 2014 in A.S.No.8 of 2004 to appoint the advocate commissioner to find whether the petitioners have the 2 ½ cents in the suit property and the same was dismissed since the respondents 1 and 2 opposed the application in I.A.No.502 of 1999 filed by the 1st petitioner and 3rd respondent for revisit of the commissioner to measure the suit property with the assistance of the surveyor during the pendency of the suit and as



such they are not entitled to seek for the prayer in the appeal. As against the above said dismissal order, the respondents 1 and 2 preferred the CRP.No.2262 of 2015 and the same dismissed by this Court by order dated 20.06.2016 granting only the liberty to filed objection to the Advocate Commissioner's report filed before the trial Court and no further relief was given. However, the revision petitioners projected a false case before the Lower Appellate Court in IA.No.52 of 2016 as if this Court had permitted them to approach the Lower Appellate Court with a petition for appointment of Advocate Commissioner as contained in para 8 of the affidavit filed in support of that Appellate Court and dismissed the same. However, by inadvertence, the same has not been brought to the attention of this Court while deciding the above CRP.No.2775 of 2017 resulting in miscarriage of justice.

4. He further submitted that the order of this Court dated 20.06.2016 in CRP.No.2262 of 2015 has become final and accepted by both the parties and while so, it was not open to the respondents to again filed the very same IA before the Lower Appellate Court and the defendants in the suit have



been dragging the appeal filed by them for the past 18 years, since they do not have any case at all, by filing the very same application again and again, notwithstanding the fact that this Court had already dismissed the said application. He further submitted that there is no dispute regarding the title and no need to ascertain the title of the suit property, when the respondents 1 and 2 have title only in the property in S.F.No.736. But the dispute with pallam land which is situated in S.F.No.739/40.

5. He further submitted that the respondents 1 and 2 filed application in IA.No.52 of 2016 to reissue the warrant to the advocate commissioner without any sufficient cause or valid reason. The reason stated by the respondents 1 and 2 to reissue the warrant to advocate commissioner for determine whether the 1st petitioner and 3rd respondent have rights of 2 ½ cents in the suit pallam property, for which appointment of advocate commissioner is not maintainable. Hence, he prays to review order in CRP.No.2775 of 2015.

6. By way of reply of the learned counsel for the revision



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petitioners/respondents 1 and 2 submitted that already the said CRP.No.2262 of 2015 was ordered and not suppressed before this Court because based on the direction given by this Court, he filed the memo before the Lower Appellate Court and prove his defence and he filed the application to appoint the advocate commissioner to measure the property and the same was rightly appreciated. Hence, there is no reason assigned by the petitioners, this application to be dismissed.

7. Considering the both submissions and perused the materials, it reveals that earlier application in CRP.No.2262 of 2015 was dismissed and this Court had given liberty to both parties and filed their objection before the trial Court along with application to appoint the commissioner to measure the property in I.A.No.52 of 2016.

8. But, the leaned counsel for the petitioners submitted that already two occasions for revisit of the property by the Advocate Commissioner along with surveyor ordered by this Court.



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WEB COPY 9. On perusal of the affidavit in I.A.No.52 of 2016 filed by the revision petitioners para 8 of the said affidavit, it is clearly mentioned about the reason for appoint of revisit the commissioner and the memo objection filed along with he want to measure the property along with surveyor.

10. As per liberty given by this Court in CRP.No.2262 of 2015, the revision petitioners filed memo objection before the Lower Appellate Court and the memo has clearly stated that the learned Commissioner failed to seek assistance of surveyor to measure the property.

11. Though, earlier occasion the plaintiffs have filed application before the trial Court for revisit to measure the property. Moreover, the revision petitioners filed application before the Lower Appellate Court and the same was not considered. But after liberty was given to the revision petitioners to prove the same.



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12. Taking into consideration of the facts, it reveals that the property has been measured by the Advocate Commissioner and his report was filed. The Advocate Commissioner's report stated that while the commissioner visiting the property surveyor was not available. Therefore, the commissioner faced much difficulty to measure the property. Hence, this Court had set aside the findings of the Lower Appellate Court and the application filed by the petitioners in I.A.No.52 of 2016 was allowed.

13. In these circumstances, I do not find any error or irregularity in the order passed by this Court in CRP.No.2775 of 2017. The Review application is dismissed. No costs.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
msrm
To

The Superintending Engineer,
Tamil Nadu Electricity Board,
Office at Tatabad, Coimbatore-12.



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T.V.THAMILSELVI, J.

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