



CRP(PD)(MD)No.1781 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 11.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1781 of 2021 and
CMP(MD) No.9492 of 2021

1.Kaliappa Naicker
2.Koodalingam
3.Vellaithai
4.Rajendran
5.Kalimuthu
6.Rajalingam
7.Dharmalingam

... Petitioners

Vs

1.Perumal Naicker
2.Senniya Naicker

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decretal order dated 21.10.2021 passed in I.A.No.1 of 2021 in O.S.No.62 of 2017, on the file of the Subordinate Judge, Virudhunagar.

For Petitioners : Mr.M.Digvijayapandian
For Respondents : Mr.P.Athimoolapandian



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ORDER

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This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Subordinate Judge, Virudhunagar in I.A.No.1 of 2021 in O.S.No.62 of 2017, dated 21.10.2021.

2.The respondents herein, who are the plaintiffs in O.S.No. 62 of 2017 filed the above suit as against the petitioners/defendants, before the Subordinate Court, Virudhunagar for the relief of declaration that they are entitled to 2/3rd share in the suit schedule property and consequently, restrain the defendants, their men and agents from encroaching into the same, by putting up a construction. Pending the suit, the plaintiffs filed an interlocutory application in I.A.No.1 of 2021, under Order XXVI, Rule 9 r/w Section 151 of Civil Procedure Code, for appointment of Advocate Commissioner and the same was allowed by the trial Court. Aggrieved over the same, the petitioners/defendants have filed this present Civil Revision Petition.



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3.The learned counsel appearing for the petitioners/defendants submits that the above interlocutory application has been filed only for the purpose of collecting evidence and with an intention to drag on the proceedings. He further submits that the suit was filed on 29.08.2017 and written statement also filed on 01.11.2017 and thereafter issues have been framed. PW 1 was also examined. After the cross examination of PW 1, the petitioner filed the above application for appointment of an Advocate Commissioner and the same was allowed by the trial Court, even without ascertaining the reasons/necessity for appointment of Advocate Commissioner. To substantiate his contentions, the learned counsel has relied upon the judgment of this Court in the case of ***Padmavathi Vs. Adaikalasamy @ Devadas***, in ***2021(1) TLNJ 267 (Civil)***, dated 18.01.2021.

4.The learned counsel appearing for the respondents/plaintiffs submits that though the suit was originally filed for declaration, subsequently, the plaintiffs filed an application in



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I.A.No.47 of 2018, to amend the prayer for including the relief of partition and mandatory injunction, which was also allowed by the trial Court. Challenging the same, the defendants filed CRP(PD)(MD)No. 552 of 2020 and this Court, by order dated 27.01.2020, dismissed the Civil Revision Petition and directed the learned Subordinate Judge, Virudhunagar to dispose of the above suit in O.S.No.62 of 2017, within a period of eight months from the date of receipt of a copy of that order. The learned counsel further submits that since the plaintiffs have also sought for mandatory injunction, in order to identify the constructions put up in the suit schedule property, the appointment of Advocate Commissioner is necessary. Hence, the order of the trial Court in allowing the application filed by the plaintiffs for appointment of Advocate Commissioner needs no interference.

5.In reply, the learned counsel for the petitioners /defendants disputed that the respondents /plaintiffs have not filed any application for amending the prayer for partition and



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mandatory injunction. Since the plaintiffs have not filed any application for amendment of the relief of partition and mandatory injunction, they are not entitled for such reliefs. The learned counsel further submits that the Advocate Commissioner had inspected the property within three days and has also filed his report immediately.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.The respondents/plaintiffs filed the above suit in O.S.No. 62 of 2017 for the relief of declaration. According to the petitioner, they have filed the application to amend the plaint for including the relief of partition and mandatory injunction and the same was allowed by the trial Court. Since the plaintiffs have taken a specific plea that the defendants have put up certain constructions in the suit schedule property, they have filed an application for appointment of Advocate Commissioner. While deciding the application, the trial Court has felt



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that for best adjudication of the suit, the report of the Advocate Commissioner is essential and allowed the application. The apprehension of the petitioners/defendants is that the respondents /plaintiffs are attempting to drag on the proceedings. It is also disputed that the Advocate Commissioner has filed his report within three days.

8.Since the trial Court felt that in order to ascertain as to whether any constructions have been put up in the suit schedule property and also for the purpose of adjudicating the suit in a proper manner, the appointment of Advocate Commissioner is just and necessary, this Court is not inclined to interfere with the order of the trial Court. However, considering the apprehension of the petitioners/defendants that the plaintiffs are attempting to drag on the proceedings and also considering the fact that already a direction has been issued by this Court in CRP(PD)MD No.552 of 2020 to dispose of the suit in O.S.No.62 of 2017 within a period of eight months by its



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order dated 21.07.2020 itself and it appears that the suit has not yet been disposed of so far, there shall be a direction to the trial Court to dispose of the suit within a period of eight months from the date of receipt of a copy of this order, without any further delay. If the petitioner is having any objection with regard to the report of the Advocate Commissioner, it is always open to the petitioner to file necessary application before the trial Court and the trial Court shall consider the same on its own merits and in accordance with law and decide the issue.

9. With the above directions, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

11.08.2022

Index : Yes / No.

Internet : Yes / No.

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To

The Subordinate Court, Virudhunagar.



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B.PUGALENDHI, J.

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Order made in
CRP(PD)(MD)No.1781 of 2021

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