



CRP(PD)(MD)No.2342 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.2342 of 2017
and CMP(MD)No.11293 of 2017

1. Rajabai Ammal (died)
2. Ragina Santhakumari
3. P.George Thangaraj
(Petitioners 2 and 3 are legal heirs
of the deceased first petitioner)

... Petitioners

versus

1. Aron
2. Muthupetchi

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.11.2017 made in I.A.No.7 of 2017 in A.S.No.18 of 2017 on the file of the Sub Court, Tiruchendur.

For Petitioners : Mr.B.Rajesh Saravanan
For R1 : Mr.N.Subramanian
For R2 : No appearance

ORDER

This Civil Revision Petition is filed as against the order dated 01.11.2017 passed by the Sub Court, Tiruchendur, in I.A.No.7 of 2017



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in A.S.No.18 of 2017.

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2. The petitioners 2 and 3 are the legal heirs of the deceased first petitioner, namely, Rajabai Ammal. Originally, the deceased Rajabai Ammal filed a suit for declaration in O.S.No.195 of 2004 before the Additional District Munsif Court, Tiruchendur. The trial Court, by Judgment and Decree dated 17.01.2006, dismissed the said suit. Aggrieved over the same, she preferred an Appeal Suit in A.S.No.157 of 2007. She has also filed an application in I.A.No.309 of 2011 before the Appellate Court seeking appointment of an Advocate Commissioner to measure the suit schedule properties with the help of the surveyor. The said application was allowed by order dated 29.12.2012 and an Advocate Commissioner was appointed to measure the suit schedule properties. Pursuant to the order of the Court, the Advocate Commissioner measured the suit property and filed his report on 10.01.2014. The respondents/defendants have raised certain objections on the Commissioner's report and filed an interlocutory application in



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I.A.No.7 of 2017 in A.S.No.157 of 2007 seeking to reject the earlier Commissioner's report, which was filed on 10.01.2014 and appoint a new Advocate Commissioner to re-survey the suit schedule properties. The said application was allowed by order dated 01.11.2017. Aggrieved over the same, the plaintiff/appellant has preferred this Civil Revision Petition. During the pendency of the Civil Revision Petition, the plaintiff/appellant died and therefore, her legal heirs are also brought on record as the petitioners 2 and 3 to contest the case.

3. The learned counsel appearing for the petitioners submits that the Advocate Commissioner has filed his report on 10.01.2014. If the respondents/defendants have any objection on the Commissioner's report, they should have filed their objections within 10 days from the date of filing the Commissioner's report. But, they have kept quiet for more than two years and when the appeal suit was posted for Judgment, they have filed the said interlocutory application in I.A.No.7 of 2017 seeking to supersede the earlier commissioner's report dated



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10.01.2014 and appoint a new Advocate Commissioner to measure the suit schedule property. Hence, he prays for allowing this Civil Revision Petition.

4. The learned counsel appearing for the first respondent submits that the Advocate Commissioner has not measured the first suit schedule property and he measured only the eastern side of the suit schedule property and has wrongly filed his report stating that the defendants have been enjoying the suit schedule properties more than they are entitled to. Therefore, they have filed the said interlocutory application along with the objections in I.A.No.7 of 2017 seeking to supersede the earlier commissioner's report dated 10.01.2014 and appoint a new Advocate Commissioner to measure the suit schedule property. The Appellate Court, after considering all these aspects, allowed the said application. Therefore, there is no reason to interfere with the same.



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5. This Court considered the rival submissions made on either side and also perused the materials available on record.

6. The petitioners are the legal heirs of deceased plaintiff and the deceased plaintiff preferred an appeal as against the Judgment passed in O.S.No.195 of 2014 dated 17.01.2006. Pending the appeal, she filed an application under Order 26 Rule 9 C.P.C. for the appointment of an Advocate Commissioner and the Appellate Court has also allowed the said application. The Advocate Commissioner has also filed his report dated 10.01.2014. The respondents/defendants have raised certain objections and filed I.A.No.7 of 2017 seeking to reject the earlier Commissioner's report and appoint a new Advocate Commissioner. The Appellate Court, by order dated 01.11.2017, appointed a new Advocate Commissioner to re-survey the property by superseding the earlier commissioner's report on the following reasons:

(i) The Advocate Commissione measured the property only based on the document produced by the appellants.



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(ii) The Advocate Commissioner measured the property as per the instructions given by the appellants.

(iii) There is a difference between the measurements in sale deeds and FMB.

(iv) The Advocate Commissioner failed to do his duty with honesty and impartiality.

Considering the reasons assigned by the Appellate Court for appointing a new Advocate Commissioner, this Court is not inclined to interfere with the order of the Appellate Court.

10. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.09.2022

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To

1. The Sub Court,
Tiruchendur.

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B.PUGALENDHI, J.

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