



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
THE HONOURABLE MR. JUSTICE P.VELMURUGAN**

DATED : 11.01.2022

CORAM :

C.R.P (MD)No.2572 of 2017 (PD)

and

C.M.P. (MD)No.11936 of 2017

WEB COPY

1.Rajasekaran
2.Senthilkumar

... Petitioners/Petitioners/
Plaintiffs

Vs.

1.Amuthan
2.Chockalingam

... Respondents/Respondents/
Defendants

Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 25.10.2017 made in I.A.No.147 of 2017 in O.S.No.87 of 2015 on the file of the Principal District Munsif Court, Manamadurai.

For Petitioners : No appearance
For Respondents : Mr.M.S.Balasubramani Iyer

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order dated 25.10.2017 passed in I.A.No.147 of 2017 in O.S.No.87 of 2015 by the Principal District Munsif, Manamadurai.

2.The petitioners are the plaintiffs have filed a suit in O.S.No.87 of 2015 before the Principal District Munsif Court, Manamadurai, for permanent injunction restraining the respondents from interfering the petitioners' peaceful enjoyment of the suit scheduled property. During the pendency of the said suit, the respondents filed an application in I.A.No.438 of 2015 for appointing an Advocate Commissioner. The said I.A was allowed and the Advocate Commissioner was appointed and he inspected and measured the suit property and filed a report. Subsequently, the petitioners/plaintiffs have filed a petition in I.A.No.147 of 2017 under Order 26 Rule 9 of C.P.C., to appoint a new Advocate Commissioner to inspect and measure the suit property with aid of Inspector of Survey. The said I.A was dismissed by the trial Court. Challenging the said order of dismissal, the petitioners/plaintiffs have filed the present civil revision petition.

3.The learned counsel appearing for the petitioners would submit that though the petitioners/plaintiffs have filed their objections to the Commissioner's report and in order to verify the measurement with the help of the qualified surveyor, he filed an



application in I.A.No.147 of 2017, the trial Court has failed to consider the same and dismissed the said I.A. Hence, the learned counsel prays that the order of the trial Court is liable to be set aside.

4.The learned counsel appearing for the respondents would submit that the respondents/defendants have already filed an application in I.A.No.438 of 2015 to appoint an Advocate Commissioner and the said I.A was allowed and the Advocate Commissioner was appointed and he inspected and measured the suit property and filed a report. But the petitioners/plaintiffs has not filed any application to strike of the report filed by the earlier Commissioner and when the earlier Commissioner report is also pending, new Advocate Commissioner cannot be appointed. Therefore, the trial Court has rightly dismissed the petition filed by the petitioners/plaintiffs. Hence, the learned counsel prays for dismissal of the civil revision petition.

5.Heard Mr.M.S.Balasubramani Iyer, learned counsel appearing for the respondents and perused the materials placed before this Court.

6.Admittedly, the petitioners/plaintiffs have filed a suit in O.S.No.87 of 2015 for bare injunction, in which, the respondents/defendants filed an application for appointment of an Advocate Commissioner. The trial Court has allowed the said petition and appointed an Advocate Commissioner, who inspected and measured the property, filed a report. In such circumstances, as the petitioners/plaintiffs even without filing any application for striking out the earlier Commissioner's report, they have filed an application to appoint a new Advocate Commissioner, which is against the settled preposition of law.

7.Under these circumstances, this Court does not find any perversity or infirmity in the order passed by the trial Court and there is no merit in the civil revision petition. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

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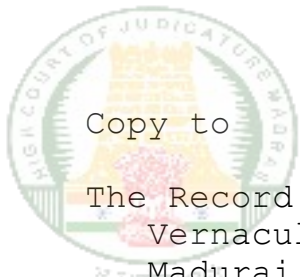
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Sub Assistant Registrar(CS)

To

The Principal District Munsif,
Manamadurai.

<https://hcservices.ecourts.gov.in/hcservices/>



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The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
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