



C.R.P.No.3262 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.3262 of 2019
and
C.M.P.No.21201 of 2019

1.Rajagopal
2.Mahalingam
3.Eswaran
4.Ayyandurai
5.Sivakumar

...Petitioners

Vs.

Ramalingam

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 21.01.2019 in I.A.No.198 of 2018 in O.S.No.236 of 2017 on the file of the Additional District (Fast Track) Court, Mettur.

For Petitioners : Mr.K.Prasath

For Respondent : Mr.Dheeraj



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ORDER

This Civil Revision Petition has been filed against an order, dismissing an application filed for appointment of Advocate Commissioner in I.A.No.198 of 2018.

2.O.S.No.236 of 2017 is a suit for partition. The suit is pending for passing of preliminary decree. Written statement had been filed by both the defendants. In the meanwhile, an application was taken out in I.A.No.552 of 2017 for appointment of Advocate Commissioner. The said application was allowed on 28.04.2018 as no counter was filed. One Mr.Stalin Raja was appointed as Advocate Commissioner, who visited the site and submitted a report. The said report was not opposed and therefore, the application was closed. After the closure of the application, I.A.No.198 of 2018 was filed for appointment of Advocate Commissioner to measure the adjacent property.

3.The learned Trial Judge dismissed the application against which the present revision.



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4.Heard Mr.K.Prasath, learned counsel for the petitioners and Mr.Dheeraj, learned counsel for the respondent. I have gone through the records.

5.In a suit, the question of appointment of second Advocate Commissioner does not arise. This has been the settled position of law for more than 100 years in this Court. An Advocate Commissioner can be appointed for the second time, only if the report filed by the previous Advocate Commissioner had been set aside or if the Court is dissatisfied with the report. No steps have been taken by the petitioners to set aside the same. They filed I.A.No.198 of 2018 for appointment of a second Advocate Commissioner, therefore, the said petition had been rightly dismissed by the Trial Court. Further more, I noticed from the records, the petitioners did not file an objection to the report filed by Mr.Stalin Raja. The learned counsel for the respondent submits that the petitioners were set exparte in the application. Merely because the respondents were exparte in the application does not mean they lose a right to file objection to the same. Therefore, granting two weeks time to the petitioners to file objection to the



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report filed by Mr.Stalin Raja on 10.08.2018. this Civil Revision Petition is dismissed. The time to file the objection commence on the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

25.08.2023

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Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order

Nuetral Citation : Yes/No



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The Additional District (Fast Track) Court,
Mettur.



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V.LAKSHMINARAYANAN, J.

KKN

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