



CRP(MD).No.2253 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.03.2023**

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

CRP(MD).No.2253 of 2022

1.M.Abdulsalam
2.M.Jageer Hussen
3.Aayeeshabeevi

... Petitioners

-Vs-

1.Bagyam
2.The Executive Officer,
Balasamuthiram Municipality,
Balasamuthiram, Palani Taluk,
Dindigul District.

3.The Tahsildar,
Palani Taluk,
Dindigul District.

4.The District Collector,
Dindigul District,
Dindigul.

... Respondents

PRAYER: This Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order, dated 30.08.2022 made in I.A.No.1 of 2022 in A.S.No.17 of 2020 on the file of



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the Principal Subordinate Judge, Palani.

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For Petitioner	: Mr. Ganeshkumar
For R1	: Mr.S. Anand Chandrasekar for M/s. Sarvabhauman Associates
For R2	: Mr. G. Sivaraja Government Advocate

ORDER

This Civil Revision Petition has been filed against the fair and decretal order, dated 30.08.2022 made in I.A.No.1 of 2022 in A.S.No.17 of 2020 on the file of the Principal Subordinate Judge, Palani.

2. The revision petitioners herein are the appellants in A.S.No. 17 of 2020 on the file of the Principal Sub Court, Palani. The said appeal has been filed by the petitioners against the Judgment and Decree of the trial Court, dated 08.01.2020 made in O.S.No.56 of 2015 on the file of the District Munsif Court, Palani. The suit was filed by the first respondent herein for permanent injunction restraining the respondents from interfering with the peaceful possession and enjoyment of the suit property. In the said suit, the revision petitioners had filed a counter



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claim. The trial Court viz., District Munsif Court, Palani by Judgment and Decree, dated 08.01.2020 dismissed the suit filed by the first respondent herein. Aggrieved by the same, the petitioners herein have filed Appeal Suit in A.S.No.17 of 2020. In the said Appeal, the petitioners filed I.A.No.1 of 2022 under Order 26 Rule 9 and Section 151 CPC for appointing an Advocate Commissioner and the same was dismissed by the Principal Subordinate Court, Palani, with the following observations:

“The main suit has been filed by the plaintiff for the relief of permanent injunction. In the suit for permanent injunction the respondent has filed the counter claim. The Tahsildar, Palani is added as 5th defendant in the suit. The 5th defendant has also filed the written statement. In the written statement the 5th defendant has stated that the encroachments have been removed. The parties in the suit have not filed the petition appointment of Commissioner before the Trial Court. Without the Commissioner's report the Trial Court has arrived at the conclusion. Even if the Commissioner's report has been filed the same could not be treated as the substantive proof of the case. The petitioner in the petition has stated that the Trial Court has observed in the Judgment that the Commissioner has not been appointed. For the reasons, the Trial Court has observed that the Commissioner has not been appointed in the suit alone cannot be cause to allow the petition. Further the petitioner has not stated the cause for not filing a similar petition before the Trial Court. In the circumstances the appeal has been preferred against the Judgment of the trial Court. Hence, at this stage this Court considers that



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*for allowing the petition no substantive cause found.
Hence, the petition is considered to be dismissed.*

In the result, the petition is dismissed. No cost.”

3. The facts remains that earlier thrice the petitioners have filed Writ Petitions under Article 226 of the Constitution of India before this Court. Pursuant to the order, dated 21.11.2014 passed in WP(MD).No. 18913 of 2014, the encroachment by the first respondent was removed by third respondent viz., Thasildar, Palani Taluk, Dindigul District. Thereafter, once again the petitioners appears to have filed another W.P(MD).Nos.4952 of 2015 and thereafter, another W.P(MD).No.6333 of 2017. The Revenue Divisional officer has also surveyed the land and removed whatever the encroachments were made by the first respondent as per the report, dated 19.09.2018. The question of appointing an Advocate Commissioner under Order 26 Rule 9 and Section 151 CPC will apply only where there are dispute relating to the boundary and in the suit for permanent injunction and for a counter claim. The order for pressing for appointing an Advocate Commissioner therefore, cannot arise. Such relief also cannot be countenanced at the belated stage of the proceedings. In my view, the Principal Subordinate Judge, Palani has correctly dismissed the



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Interlocutory Application filed by the petitioners.

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4. The conclusion of the learned Principal Subordinate Judge, Palani while dismissing the application in I.A.No.1 of 2022 in A.S.No.17 of 2020, dated 30.08.2022 does not call for interference with.

5. Accordingly, this Civil Revision Petition is dismissed . No costs.

16.03.2023

Index : Yes / No
Internet : Yes/ No
trp

To

The the Principal Subordinate Judge, Palani.



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C.SARAVANAN,J.,

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