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C.R.P.(NPD).No.49 of 2020 & C.M.P.No.311 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(NPD).No.49 of 2020 &
C.M.P.No.311 of 2020

1.Mary
2.Xavier

... Petitioners

-Versus-

1.Sathiavelu (Died)
2.The State rep. by the
Collector of Nilgiris,
Udhagamandalam, The Nilgiris.
3.The Executive Officer,
Jegathala Panchayat,
Aruvankadu, The Nilgiris.
4.Murugan
5.Dhanalakshmi
6.Sandeep
7.S.Subbulakshmi
8.S.Mythili

... Respondents

(R7 and R8 brought on record
as LRS of the deceased first
respondent)

Civil Revision Petition filed under Section 115 of Code of Civil Procedure to set aside the fair and decreetal order passed in I.A.No.260 of 2018 in A.S.No.24 of 2017 dated 04.10.2019 on the file of the District Judge of the Nilgiris, Uthagamandalam.



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For Petitioners : *Mr.S.Elambharathi*
For Respondent 2 : *Mr.T.Arunkumar,*
Additional Government Pleader
For Respondents : *Mr.V.Chinnasamy*
3, 7 & 8
For Respondents : *No appearance*
4 to 6

ORDER

This Civil Revision Petition is preferred against the order and decretal order passed in I.A.No.260 of 2018 in A.S.No.24 of 2017 dated 04.10.2019 on the file of the learned District Judge of the Nilgiris at Udthagamandalam.

2. I.A.No.260 of 2018 was an application filed for the purpose of appointing an Advocate Commissioner to be accompanied by the Government Surveyor to make a local inspection of the property and submit a report. The said application was dismissed by the learned District Judge on the ground that an Advocate Commissioner had already visited the property on two occasions in the respective suits and they had filed reports as Ex.C1 to Ex.C4. He had further held that until the first Advocate Commissioner's report is set aside, there is no question of appointing the second Advocate Commissioner for the same purpose.



3. Mr.Elambharathi would invite my attention to the report filed by the Advocate Commissioner to state that since the Commissioner has not visited the property along with the surveyor, the Commissioner's report is defective.

4. I drew his attention to the objection filed by defendants 3 and 4, who are the civil revision petitioners, to the Commissioner's report on 22.02.2016. In the said report, the factum that the Commissioner had visited the property without the Government surveyor, has not even been taken as a ground for objection. Both sides will agree that the Advocate Commissioner's report was not yet set aside by the trial court.

5. In a civil proceeding, there cannot be two sets of Advocate Commissioner's report for the same purpose. An Advocate Commissioner can be appointed for the second time for the same purpose only if the first report is set aside. As long as the first report is on record, the question of appointing the second Advocate Commissioner will not arise even at the stage of trial and let alone in appeal.

6. If at all the petitioners so desire, it is always open to them to summon



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the surveyor report from the appropriate authority, especially since in this particular case, the State of Tamil Nadu is a party defendant. If such a course of action is open to the petitioners, it is always open for them to take out an appropriate application and if the Court so feels, it can always consider the same. However, I am not inclined to appoint an Advocate Commissioner for the second time, when the first report is still on record and that too, at the appellate stage.

7. In view of the above, the civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

01.04.2024

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Index : yes / no

Neutral Citation : yes / no

Speaking / Non Speaking Order



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To

The District Judge of the Nilgiris, Uthagamandalam.



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V.LAKSHMINARAYANAN, J.

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