



CRP.No.791 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.791 of 2022

and

CMP No.3979 of 2022

1. Karuppukarasi
W/o Karuppusamy
 2. Karuppusamy,
S/o Periyamurugan @ Palanisamy
 3. Rathinasamy
S/o Late Chinnamurugan @ Chellappagounder
 4. Ananthamoorthy,
S/o Karuppana Gounder
 5. M.S.Mani,
S/o Chellappagounder
 6. Thangarasu @ Vengatachalam,
S/o Samygounder
- ... Petitioners

vs.

Kumarasamy
S/o Palanigounder

... Respondent.

Prayer in CRP : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dtd 30.03.2021 in I.A.No.1 of 2021 in I.A.No.3 of 2019 in O.S.No.215 of 2019 on the file of District Munsif Court at Gobichettipalayam.



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For Petitioners : Mr.N.Chinnaraj

For respondent : Mr.P.R.Balasubramanian

ORDER

This Civil Revision Petition has been filed against the dismissal order dated 30.03.2021 passed in I.A.No.1 of 2021 seeking to reopen I.A.No.3 of 2019, filed for appointment of Advocate Commissioner, in which, the learned District Judge, Gobichettipalayam, had appointed an Advocate Commissioner, who had also filed his report on 18.12.2019.

2. (i) Learned counsel for the petitioners would submit that the suit was filed by the respondent/plaintiff for permanent injunction restraining the petitioners/ defendants from interfering with the peaceful possession and enjoyment of the cart track. The respondent/plaintiff had filed I.A.No.3 of 2019, pursuant to which, an Advocate Commissioner was appointed and submitted his report on 18.12.2019. The lower Court granted 10 days time to the petitioners i.e., till 29.12.2019, to file objections to the Advocate Commissioner's report. Since objections was not filed within 10 days, the said application was closed. Therefore, the petitioners filed I.A.No.1 of 2021 to reopen I.A.No.3 of 2019 to direct the Advocate Commissioner to measure the suit schedule property and to file additional report along with map. The said application was dismissed on the ground that the petitioners did not file objections within 10 days but



filed objections along with application No.1 of 2021 after 1 year and 4 months. Learned counsel for the petitioners would further submit that the petitioners have valid point to succeed in the suit. If the application in I.A.No.1 of 2021 is not allowed and if the Advocate Commissioner is not allowed to re-inspect the property and file additional report, the petitioners will be put to great hardship and irreparable loss. Hence, he would pray to allow this civil revision petition.

3. Per contra, the learned counsel for the respondent would submit that though sufficient opportunity was given to the petitioners to file their objections to the advocate commissioner's report, they have not done so. Thus, the lower court had rightly dismissed the application filed by the petitioners. Therefore, the civil revision petition is liable to be dismissed.

4. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent and perused the materials available on record.

5. It is seen from the records that the petitioners have not filed their objections to the Advocate Commissioner's report within the time granted by the lower court. However, after a long lapse of time i.e., after a period of one year and four months, they have filed the application in I.A.No.1 of 2021 to reopen I.A.No.3 of 2019 filed for appointment of Advocate Commissioner. There is no sufficient cause or reason stated in the



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application for such a long delay. The lower Court has also observed in the order passed in I.A.No.1/2021 that the petitioners/defendants have also admitted in the written statement filed by them that they have not made any objection in the respondent's right in using the cart track to reach the well at S.F.No.24/9. Therefore, this Court is of the opinion that the petitioners are deliberately trying to drag on the proceedings in the suit with a malafide intention. This Court finds no infirmity or illegality in the order passed by the lower court. Hence, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

19.02.2024

Index: Yes/No
Speaking /Non speaking order
vsi

To

1. District Munsif Court
at Gobichettipalayam



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J.NISHA BANU, J.

vsi

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