



C.R.P.(PD).No.779 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.779 of 2021
and C.M.P.No.6511 of 2021

1.Krishna Gounder

2.Moorthi

3.Settu

... Petitioners

vs

Pachaiyappan (Died)

1.Narasimman

2.Ganesan

3.Vanaja

4.Vasanth

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the District Munsif Court at Harur, dated 15.02.2021 in I.A.No.620 of 2019 in O.S.No.165 of 2006.

For Petitioners : Mr.T.Deeraj
for M/s.PV Law Associates

For Respondents : Mr.P.Muthusamy



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ORDER

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The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioners seeking reissue of warrant to the Advocate Commissioner, who filed the report by measuring the suit property earlier.

2. The respondents herein filed a suit for declaration of title of A-schedule property, recovery of possession of suit – B schedule property after removal of the construction put up thereon. Pending suit, an Advocate Commissioner was appointed and he measured the suit properties with the help of Surveyor and filed a report and plan along with plan of the Surveyor. The suit was initially decreed in favour of respondents and aggrieved by the same, the petitioners preferred an appeal. The First Appellate Court allowed the appeal mainly on the ground that the respondents failed to mention the measurement of the encroached portion and remanded the matter back to the Trial Court with a direction to the respondents/plaintiffs to amend the plaint with regard to the exact measurements of the encroached portion.



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3. It is stated that subsequent to the remand, the respondents also filed amendment application to include exact measurement of the encroached portion as per the Advocate Commissioner's report filed earlier. Thereafter, the present petitioners/defendants has come up with this petition seeking reissue of warrant to the earlier Advocate Commissioner to measure the property again. In the affidavit filed in support of the petition, it is stated by the petitioners that B, C portion of the suit property was not properly measured due to availability of bushes at the time of measurement. Therefore, according to the petitioners, the same has to be measured again. The Court below dismissed the petition filed by the revision petitioners on the ground that Advocate Commissioner has not mentioned anything about the availability of bushes and difficulty in measuring the B, C portion of the suit property in his report.

4. If the petitioners are really aggrieved by the Advocate Commissioner's report and plan, they should have sought for reissue of warrant immediately. Without seeking remeasurement, they conducted the case based on the Advocate Commissioner's report and plan and the suit was



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also disposed of. Now, after remand and the amendment of the plaint by the respondents, the instant application has been filed by the petitioners seeking reissue of warrant to the Advocate Commissioner.

5. As rightly pointed out by the Court below, in the Advocate Commissioner's report and plan, it was not mentioned that there was any difficulty in measuring the B, C portion due to the availability of bushes. In these circumstances, the petitioners have not made out any case for remeasuring the property and as a consequence, the prayer for reissue of warrant to the Advocate Commissioner is not at all necessary.

6. In view of the discussion made earlier, the Civil Revision Petition stands dismissed by confirming the order passed by the Court below. No Costs. Consequently, the connected civil miscellaneous petition is closed.

12.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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The District Munsif Court,
Harur.



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S.SOUNTHAR, J.

dm

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