



C.R.P.(PD).No.2274 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2274 of 2020
and CMP.No.14230 of 2020

1.Ettiappan
2.Subramani

... Petitioners

vs.

1.Rajammal
2.Chinnadurai
3.Palani
4.Santosh

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the order dated 31.01.2020 made in I.A.No.833 of 2019 in I.A.No.715 of 2014 in O.S.No.261 of 2014 on the file of the District Munsif Court, Madurantakam, Chengalpet District.

For Petitioners : Mr.S.Senthinathan

For Respondents :Mr.K.Govi Ganesan for R1
No such person for R2 to R4



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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 petitioners seeking to scrap the Advocate Commissioner report filed in I.A.No.715 of 2014. The first respondent herein filed a suit for bare injunction. Pending the suit, Advocate Commissioner was appointed to visit the suit property and note down the physical features. The Advocate Commissioner was appointed for local inspection along with Taluk Surveyor to note down the physical features, measure the property and file a report. Accordingly, the Advocate Commissioner visited the suit property on 17.02.2018, measured the property with the help of surveyor and noted down the physical features and filed a report. Thereafter, the present application has been filed by the petitioners/defendants 1 and 2 on the ground that the Advocate Commissioner failed to issue notice to the petitioners and inspected the property in their absence.

2. The Court below dismissed the said petition on the ground that perusal of Advocate Commissioner's report indicates notice was issued



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to all the parties concerned before visiting the suit property. Aggrieved by the same, the petitioners is before this Court.

3. The learned counsel appearing for the petitioners relying on the memo of the Advocate Commissioner included in the typed set of papers at page No.12 submitted that as per the memo issued by the Advocate Commissioner, notice was issued only to the plaintiffs and defendants 3 to 4 and no notice was issued to the petitioners 1 and 2. The petitioners also disputed the measurements mentioned by Advocate Commissioner.

4. Though the Advocate Commissioner in his report mentioned that he issued notice to both the petitioners and respondents, in the memo filed by him, it was clearly mentioned that notice was issued only to the respondents not to the petitioners/defendants 1 and 2. The Court below passed the impugned order only based on the statement made by the Advocate Commissioner in the report, without verifying the memo filed by him along with the report. The memo filed by the Advocate Commissioner would suggest that no notice was issued by the petitioners. Therefore, the



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petitioners shall be given an opportunity to present their points before the Advocate Commissioner at the time of local inspection. Hence, the Court below is directed to re-issue warrant to the Advocate Commissioner to visit the suit property and re-measure the same with the help of Surveyor and note down the physical features in the presence of all the parties including the petitioners and file fresh report.

5. With these observations, the Civil Revision Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

09.01.2024

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

The District Munsif Court, Madurantakam,
Chengalpet District.



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S.SOUNTHAR, J.

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