



C.R.P.(PD)(MD).No.910 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.910 of 2019

and

C.M.P(MD) No.5239 of 2019

1. B.Palanivel
2. B.Ganesamoorthy

J.Chennama Naickar (died)

3. Kannayasamy
4. Govindaraj
5. Murugan
6. Kannamma
7. Kamuthai

... Petitioners/Petitioners 1 to 8/
Appellants 1 to 8/ Plaintiffs

-vs-

P.Rajendran

... Respondent/Respondent/
Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the executable order and fair order dated 18.02.2019 made in I.A.No.16 of 2018 in A.S.No.14 of 2018 on the file of the Additional District Judge, FTC, Theni.

For Petitioners : Mr.R.Suriyanarayanan

For Respondent : Mr.M.Senthilkumar



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ORDER

The present Civil Revision Petition has been filed by the appellants in A.S.No.14 of 2018 on the file of the Additional District Court, Theni, challenging an order, wherein, the application filed by the appellants for appointment of an Advocate Commissioner has been dismissed.

2. The Petitioners/appellants herein as the plaintiffs had filed O.S.No. 11 of 2013 on the file of the Sub Court, Theni, for the relief of declaration and permanent injunction. The suit was dismissed by the trial Court on the ground that the documents filed by the plaintiffs would not relate to the suit schedule property and the plaintiffs have not properly identified the suit schedule property. Challenging the same, the plaintiffs had filed A.S.No.14 of 2018 before the Additional District Court, Theni, and the said appeal is pending. The plaintiffs had filed I.A.No.16 of 2018 for appointment of an Advocate Commissioner to note down the physical features of the property with the help of the Surveyor to ascertain the location and identity of the suit schedule property. The said application was dismissed by the first appellate Court on the ground that the plaintiffs/appellants had filed the application only to collect the evidence on their side by appointment of an Advocate



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Commissioner at the appellate stage. Challenging the same, the present Civil Revision Petition has been filed.

3. The plaintiffs had also filed I.A.No.3 of 19 in the said appeal for reception of additional evidence. The first appellate Court after allowing the said application and the matter was remanded back to the trial Court by an order, dated 04.04.2022. The defendant in the said Suit had filed C.M.A(MD) No.1024 of 2022 before this Court, challenging the order of remand. The learned Single Judge, by his order dated 10.03.2023 had allowed the appeal and directed the first appellate Court to decide the matter on merits. This Court has further held that, if the trial Court feels that the additional evidence has to be taken, the same can be taken in accordance with the Order 41 Rule 27 and Order 41 Rule 28 of C.P.C. Based on the above said observations, this Court had set aside the order of remand and directed the first appellate Court to follow the procedure as contemplated under Order 41 Rule 28 of C.P.C and to dispose of the appeal and directed to record the additional evidence within a period of one month from the date of receipt of a copy of the order. After framing necessary issues this Court had directed the first appellate Court to dispose of the appeal itself within a period of two months thereafter.



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4. In view of the subsequent events, this Court finds that no purpose would be served in adjudicating I.A.No.16 of 2018 for the purpose of appointment of an Advocate Commissioner. Further, it is seen from the pleadings of the either parties as well as the judgment of the trial Court, there is no dispute with regard to the fact that the suit property is located in the Kanavaipatti Village. A perusal of the judgment and decree in A.S.No.14 of 2018 (the order of remand) clearly indicates that the petitioners had filed I.A.No.3 of 2019 for reception of additional evidence in order to prove the identity of the property. Therefore, it is for the petitioners/appellants to workout their remedy in the first appeal on the basis of the order passed in I.A.No.3 of 2019 and the order passed by this Court in C.M.A.(MD) No.1024 of 2022, dated 10.03.2023.

5. With the above said observations, this Civil Revision Petition is disposed of. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

02.04.2024

NCC : Yes/No



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Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Judge,
FTC, Theni.



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R.VIJAYAKUMAR,J.

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