



C.RP(MD)No.1578 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1578 of 2024

and

C.M.P(MD).No.9334 of 2024

1.Sharlet
2.Belsy Soorial

... Petitioners

1.Selvi
2.Sarbie Soorial
3.George

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 04.04.2024 in E.A.NO.7 of 2023 in E.P.No.18 of 2020 in O.S.No.429 of 2010 on the file of the Principal District Munsif Court, Kuzhithurai and to set aside the same.

For Petitioner : Mr.S.Karthikeyan

ORDER

The Civil Rivision petition is directed against the order dated 04.04.2024 in E.A.No.7 of 2023 in E.P.No.18 of 2020 in O.S.No.429 of 2010 on the file of the Principal District Munsif Court, Kuzhithurai.



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2. The execution petition is filed to execute the decree made in O.S.No. 429 of 2010. In the execution petition, the above Interlocutory Application is filed by the petitioners/ judgment-debtors. It is the claim of the petitioners/ judgment-debtors that when the Commissioner inspected the property in the original suit without ascertaining the entire 35 cents and thereafter, demarcating the suit property, the Commissioner had erroneously measured the suit property and filed the report, based on which, the decree has been passed and therefore, they seek to appoint a fresh Commissioner so that the property belonging to the decree-holder can be identified correctly. The learned counsel for the petitioners submits that merely on the error committed by the earlier Commissioner without even right title or interest, the decree-holder is gaining the possession of the property belonging to the petitioners herein to which she is otherwise not entitled to.

3. I have considered the said submission made by the learned counsel for the petitioners and perused the materials record of the case.

4. By an application for appointing a fresh Commissioner in the execution petition, the petitioners virtually seek to scrap the Advocate



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Commissioner' report, which is filed in the original suit. The said proceeding should have been taken pending the suit and when no such proceedings are taken in the original suit and the Advocate Commissioner' report having been relied upon by the trial Court and the after identifying the suit property, the suit is decreed, now in the execution petition, the second Commissioner cannot be appointed that too for the purpose of discrediting or scrapping the earlier Commissioner's report.

5. In view thereof, the Execution Court has rightly dismissed the said application and as such, finding no merits, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

19.07.2024

NCC:Yes/No
Index:Yes/No
Rmk

To
1.The Principal District Munsif Court, Kuzhithurai.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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