

?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 29.04.2019

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THE HONOURABLE MRS.JUSTICE J. NISHA BANU

+C.R.P(MD)No.58 of 2010

and

M.P.(MD).No.1 of 2010

#1.Ramasamy Somayajiar

2.Lekshmi Narasimma Somayajiar

(The petitioners 1 and 2 are represented by their  
Power Agent S.Yegnanarayanan ~ 3rd petitioner herein)

3.S.Yegnanarayanan .. Petitioners / Petitioners  
Defendants 1 to 3

Vs.

\$1.Periyar Government  
Higher Secondary School,  
Cherankovilpathu Village,  
Cheranmahadevi,  
Ambasamudram Taluk,  
through its Headmaster.

2.Parent Teachers Association,  
Periyar Government Higher Secondary School,  
Cherankovilpathu Village,  
Cheranmahadevi,  
Ambasamudram Taluk,  
through its President,  
M.Maharaja  
S/o.Muthiah Thevar .. Respondents/ Respondents  
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution  
of India, against the fair and decreetal order, dated 18.09.2009, passed in  
I.A.No.480 of 2008 in O.S.No.86 of 2004 by the District Munsif cum Judicial  
Magistrate, Cheranmahadevi.

!For petitioners : Mr.AR.L.Sundharesan,  
Senior Counsel for  
Mr.J.Parekhkumar

^For 1st respondent : Mrs.S.Srimathy,  
Special Government Pleader

For 2nd respondent : Mr.K.Nallathambi

:ORDER

This petition has been filed by the petitioners/Defendants 1 to 3 as against the order, dated 18.09.2009, passed in I.A.No.480 of 2008 in O.S.No.86 of 2004, whereby and whereunder the petition filed by the petitioners seeking to appoint an Advocate Commissioner to note down the physical features of the suit properties, along with the Surveyor and to file a report, was dismissed by the Court below holding that in respect of the suit item Nos.1 to 3, the Advocate Commissioner-s report filed in the earlier suit, which has been marked as Ex.P21, can be taken into account and therefore, the appointment of Advocate Commissioner in this suit is not necessary.

2. When the matter came up for hearing today, the learned Senior counsel appearing for the petitioners submitted that the measurements mentioned in the present suit schedule properties and in the earlier suit schedule properties differ and therefore, the Advocate Commissioner-s report filed in the earlier suit cannot be relied upon. He would further submit that the main stand of the petitioners/defendants is that the measurements of the suit schedule properties are totally wrong and such measurement of land is not physically available and further in the present plaint, there are totally about 10 properties mentioned, whereas in the earlier suit only three properties were mentioned and that the Court below, without considering the said aspects, has erroneously dismissed the petition for appointment of Advocate Commissioner. After an elaborate arguments, the learned counsel appearing for the respondents fairly submitted that the respondents have no objection in allowing this petition.

3. In view of the above, the Civil Revision Petition is allowed and the order passed by the Court below is set aside and the matter is remitted to the file of the Court below for appointment of an Advocate Commissioner to note down the physical features of the suit schedule properties, within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

To

1.The District Munsif cum Judicial Magistrate,  
Cheranmahadevi.

2.The Record Keeper,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.