



WEB COPY



CRP No.2957 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P. No.2957 of 2016
and
C.M.P.No.14986 of 2016

1. J.Natarajan

2. Minor Sathyadevi

3. Minor Chellam

Minors 2 & 3 are represented by her father/
Natural Guardian J. Natarajan

.... Petitioners

Vs

1. Neelakandan

2. Sivaraman

.... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order of the III Additional District Munsif Court at Kallakurichi dated 05.04.2016 in I.A.No.2398 of 2015 in O.S.No.362 of 2011.

For Petitioner : Mr.P.Valliappan

For R1 : Mr.R.Bharath Kumar

For R2 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order dated 05.04.2016 in I.A.No.2398 of 2015 in O.S.No.362 of 2011 on the



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file of the III Additional District Munsif Court at Kallakurichi, thereby dismissing the application filed for appointment of Advocate Commissioner.

2. The petitioner is the defendant in the suit filed by the respondent for declaration and permanent injunction in respect of the suit property. Pending suit, the petitioners filed an application for appointment of Advocate Commissioner in I.A.No.1873 of 2013 and the same was dismissed by the Court below. Aggrieved by the same, the petitioner preferred Civil Revision Petition before this Court in CRP.No.1718 of 2015 and the same was also dismissed by this Court. Once again, the petitioner filed an application for appointment of Advocate Commissioner.

3. The learned counsel appearing for the petitioner would submit that the second application for appointment of Advocate Commissioner would not be hit by *res judicata* and it is very well maintainable. However, the Court below dismissed the present application only on the ground that the earlier petition for appointment of Advocate Commissioner was dismissed.



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4. A perusal of the records reveals that though the petitioner can maintain the second application for appointment of Advocate commissioner, there is absolutely no change in circumstances to appoint the Advocate Commissioner, that too in the suit filed by the respondent for declaration and injunction. If at all any admission is made by the respondent in their evidence in the cross examination, it would be a ground to agitate the suit. The reasons stated in the affidavit filed in support of the application for appointment of Advocate Commissioner would amount to collection of evidence and as such, the Court below rightly dismissed the application.

5. In view of the above, this Court finds no infirmity or illegality in the order passed by the Court below. Accordingly, this Civil Revision Petition stands dismissed. The Trial Court is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

08.12.2022

Index : Yes/No
Internet : Yes/No
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G.K.ILANTHIRAIYAN,J.

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To

The III Additional District Munsif,
Kallakurichi

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and
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