



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4082 of 2022 and
C.M.P.No.21177 of 2022

Kamatchi

..

Petitioner

VS

1. Ganesan
2. Sangeetha
3. Santhosh

..

Respondents

Prayer: Petition filed under Article 227 of the Constitution of India praying to set aside the fair and decretal order passed by the Sub Court, Harur dated 15.12.2021 made in I.A.No.72 of 2018 in A.S.No.18 of 2018 and to allow the interlocutory application as prayed for.

For Petitioner

: Mr.J.Pradeep

ORDER

The fair and decretal order passed in I.A.No.72 of 2018 in A.S.No.18 of 2018 dated 15.12.2021 is under challenge in the present revision petition.



2. The suit was instituted for permanent injunction, which was decreed by the Trial Court. Challenging the judgment and decree, the defendant in the suit filed an appeal suit in A.S.No.18 of 2018. During the pendency of the appeal suit, the revision petitioner filed I.A.No.72 of 2018 for appointment of an Advocate Commissioner to measure the suit property.

3. The First Appellate Court adjudicated the issues and found that already an Advocate Commissioner was appointed by the Trial Court, who inturn submitted a report and the said report was marked as a document. When the Trial Court appointed an Advocate Commissioner and the said Advocate Commissioner filed a report, which was marked as a document and made a finding. In respect of the finding in the Advocate Commissioner's report, the Appellate Court formed an opinion that no further appointment of Advocate Commissioner is required in the appeal suit.

4. The learned counsel appearing for the petitioner made a submission that there are certain discrepancies in the report of the Advocate Commissioner appointed by the Trial Court, if so, the revision petitioners



are at liberty to raise their objection by establishing their case. Contrarily, the repeated appointment of Advocate Commissioner would unnecessarily lead to creation of further evidences at the insistence of the Court and thus, the First Appellate Court has rightly rejected the interlocutory application filed by the revision petitioner for appointment of Advocate Commissioner.

5. The appointment of Advocate Commissioner is to be made only with reference to the issues raised and could not be appointed for the purpose of creating evidences at the insistence of either of the parties. The parties are open to establish their case with the documents and evidences available and only if the Court raises a doubt with reference to certain issues, then alone an Advocate Commissioner is to be appointed, but not otherwise.

6. In the present case, the Trial Court appointed an Advocate Commissioner and a report was also marked as a document in the suit itself, while so, the revision petitioner has to raise her objection, if any, in the said report before the First Appellate Court for the purpose of establishing the case. Thus, the revision petitioner has not made out any acceptable ground



for the purpose of entertaining the civil revision petition and subsequently,
the same stands dismissed. There will be no order as to costs. Consequently,
connected miscellaneous petition is closed.

08.12.2022

Index : Yes
Speaking order

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To

1.The Sub Court, Harur.



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S.M.SUBRAMANIAM, J.

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