



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No. 4137 of 2022

K. Sengottian (Deceased)

1. Manomani

2. Ramesh

3. Sugunadevi

..Petitioners

Vs

1. E.S. Palanisamy

2. S. Chandrasekaran

...Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, seeking to revise the order passed by the learned I Additional Subordinate Judge, Erode dated 21.07.2022 in I.A.No. 4 of 2022 in I.A.No. 292 of 2015 in I.A.No. 647 of 2013 in O.S.No. 444 of 2013.

For Petitioners

: Mr. Abhinav Parthasarathy



ORDER

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The fair and decreetal order passed in interlocutory application in I.A.No. 4 of 2022 in O.S.No. 444 of 2013, is under challenge in the present civil revision petition.

2. The plaintiff is the revision petitioner herein who instituted a suit for injunction. The suit was instituted in the year 2013 and pending for the past about nine years. It is not in dispute that the trial court already appointed an Advocate Commissioner who inturn inspected the suit schedule property and submitted a report on 07.11.2013. The second Advocate Commissioner was appointed in the same I.A.No. 292 of 2015 and the said Advocate Commissioner also submitted his report on 22.01.2020.

3. Two reports from two different Advocate Commissioners were received by the trial court and the suit is now posted for trial. P.W.1 was examined and before cross examination, he died. Thus the trial has to be proceeded with by affording opportunity to the parties. At that point of time, the plaintiff filed the interlocutory application in I.A.No. 4 of 2022 to appoint an advocate commissioner again to inspect the suit property since there were certain discrepancies in the



report of the second advocate commissioner. The trial court considered the interlocutory application and formed an opinion that such application to appoint Advocate Commissioner on third occasion for the purpose of establishing the case by the plaintiff cannot be entertained. Such interlocutory application filed during the trial is found to be for the purpose of creating evidence and thus the trial court rejected the interlocutory application.

4. Appointment of an advocate commissioner cannot always be done at the instance of the parties. Such interlocutory applications are filed frequently for the purpose of creating further evidence or otherwise and therefore the courts are expected to be slow in appointing the advocate commissioner. Every party approaching the court of law is bound to establish his case through documents and evidences. He cannot with the aid of the court secure further evidences for the purpose of establishing his case. The courts have repeatedly held that appointment of an advocate commissioner must be done only if it is just and necessary and for removing the doubt if any arises in the mind of the court and not to establish the case by any one of the parties to the litigation.



5. In the present case, two advocate commissioners were appointed before the commencement of trial and those two commissioners submitted their respective reports. The parties are at liberty to raise their objections on the report which is to be considered by the trial court. However, appointment of third advocate commissioner is unnecessary and such interlocutory applications are filed mainly with an idea to prolong and protract the suit.

6. If proceedings of the suit is found to be inconvenience to any one of the parties, that they are attempting to prolong the suit one way or other either by getting unnecessary adjournments or by filing frivolous interlocutory applications, those frivolous or unnecessary interlocutory applications filed to prolong and protract the suit must be viewed seriously by the courts concerned and maximum costs is to be awarded on such applications. Two advocate commissioners submitted a report knowing the fact the revision petitioner herein filed another interlocutory application to appoint an advocate commissioner on third occasion which is an intentional attempt to prolong and protract the issue or to secure further evidence in order to establish his case and both the ideas at no circumstances to be



encouraged by the Courts and to be thwarted.

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7. The suit is only for injunction and is pending for past about nine years. Even after a lapse of nine years when the suit is taken up for trial, the plaintiff filed an interlocutory application for appointment of advocate commissioner which would reveal that the interlocutory application was filed with an ill-motive either to drag on the proceedings or to collect further evidences and therefore the revision petition is to be dismissed with heavy costs. However, considering the other mitigating factors, this Court is inclined to dismiss the revision petition with a cost of Rs. 3,000/-, which is to be paid to the respondents/defendants within a period of two weeks from the date of receipt of a copy of this order.

8. The trial court is directed to verify the payment of costs to the defendants and send a report to the Registrar Judicial, High Court of Madras.

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Index : Yes / No
Speaking order / Non-Speaking order
mrn



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To
The I Additional Subordinate Judge,
Erode.



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S.M.SUBRAMANIAM, J.

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