



C.R.P.(P.D.)No.4124 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.(P.D.)No.4124 of 2022

and

C.M.P.No.21461 of 2022

Pandiyan

... Petitioner/4th Defendant/Plaintiff

Vs.

1. Babu

2. Sivraman

3. Jagankumar

4. Poorvika

5. Rajammal

6. Varadharajan

7. Gobu

8. Ramesh

9. Thangavel

... Respondents 2-9/Defendants 1-3, 5-9/Respondents 2-9



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Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to direct the Honble IX-Judge, Small Cause of Court, Chennai to set aside the Fair & Decreetal order dated 22.04.2022 passed in I.A.No.3 of 2021 in O.S.No.46 of 2020 on the file of Additional Subordinate Court, Namakkal.

For Petitioners : Mr.S.Saravana Kumar

ORDER

The revision petition is filed challenging the fair and decretal order dated 22.04.2022 passed in I.A.No.3 of 2021 in O.S.No.46 of 2020.

2.The revision petitioner is the 4th defendant in the Civil Suit which was instituted for declaration and permanent injunction. The suit is posted for trial and cross-examination of PW-1. At that stage, the revision petitioner/ 4th defendant filed an interlocutory application for appointment of an Advocate Commissioner to examine the suit cart track. The Trial Court considered the reason set out in the interlocutory application filed by the revision petitioner and found that the suit X1 to X7 cart track Rough Plan in the plaint, is the



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matter of dispute between the parties.

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3.The Trial Court found that in the affidavit filed in support of the interlocutory application, it has been admitted by the revision petitioner/4th defendant that suit cart track was formed by the plaintiff and the 1st defendant after the partition effected between them and their father. Therefore, the existence of “X1 to X7” suit cart track is not disputed by the revision petitioner. Having admitted the suit cart track which was formed by the plaintiff and the 1st defendant, without the knowledge and consent of the plaintiff, the 1st defendant shall have no right either to confer easementary right to the defendants 4 to 9 or to create any documents for that purpose. The trial has already commenced and PW-1 has been examined partly. At this stage, filing an application for appointment of Advocate Commissioner would be unwarranted and thus, the Trial Court formed an opinion that the interlocutory application was filed to drag on the proceedings.

4.When certain issues are admitted between the parties, the question of appointing an Advocate Commissioner would not arise at all,



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because for each and every aspect Advocate Commissioner need not be appointed. If at all, there is any serious doubt in the mind of the Court to resolve certain disputed issues, then alone an Advocate Commissioner is to be appointed but not otherwise.

5.Thus, in this case, the revision petitioner has not established any acceptable reason to interfere with the order passed by the Trial Court and accordingly, the civil revision petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

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13.12.2022

Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

To

1. IX-Judge, Small Cause of Court, Chennai

2. Additional Subordinate Court, Namakkal.

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S.M.SUBRAMANIAM.J.,

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