



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.244 of 2023

and

C.M.P.No.2034 of 2023

1.P.Masa Naicker

2.Nalraj @Rangasamy

3.Subramani

4.S.Rangasamy

... Petitioners

Vs.

C.Rangasamy

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Fair and Final order dated 06.12.2022 in I.A.No.5 of 2022 in O.S.No.115 of 2019 on the file of District Munsif Court, Bhavani.

For Petitioners

: Mr.S.Kaithamalai Kumaran



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ORDER

The civil revision petition is filed against the fair and decreetal order dated 06.12.2022 passed in I.A.No.5 of 2022 in O.S.No.115 of 2019.

2. The revision petitioners are the defendants and the respondent / plaintiff, who instituted a Suit for declaration and injunction. The trial had commenced in the Suit and the examination of plaintiff's side witnesses were completed. The Suit was listed for part cross-examination of DW1 and at that point of time, in order to fill up *lacuna* and for the purpose of collecting evidence, the revision petitioners / defendants in the suit filed I.A.No.5 of 2022 for appointment of an Advocate Commissioner to measure the property and submit a report.

3. The Trial Court adjudicated the issues and made a finding that the trial had commenced and examination of plaintiff's side witnesses were concluded. When the Suit is listed for the part cross-examination of DW1, the Interlocutory Application is filed with an idea to fill up the *lacunae* and to collect further evidences to establish the case by the defendants. Accordingly, the petition was dismissed.



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4. Appointment of an Advocate Commissioner cannot be made at the instance of the parties, enabling them to establish their case. All the parties are expected to establish their respective cases through documents and evidence. Only if the Court raises a doubt or requires further clarifications in respect of any issues, an Advocate Commissioner can be appointed and not otherwise. Parties filing Interlocutory Application to drag on the proceedings at no circumstances be encouraged by the Courts. All such applications are to be disposed of without causing any undue delay and if it is found that frivolous applications are filed with an ill-motive to drag on the proceedings, maximum cost is to be imposed and therefore, the Courts are expected to be cautious, while entertaining such Interlocutory Application that are filed after commencement of trial.

5. In the present case, Interlocutory Application for the appointment of an Advocate Commissioner was filed after the commencement of trial and more so, after the completion of examination of the plaintiff's side witnesses. This being the factum, this Court do not find any infirmity in respect of the order passed by the Trial Court.



6. Accordingly, the fair and decreetal order dated 06.12.2022 passed in I.A.No.5 of 2022 in O.S.No.115 of 2019 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.244 of 2023 is dismissed. No costs. Connected Miscellaneous Petition is closed.

07.02.2023

Jeni

Index : Yes

Speaking order

Neutral Citation : Yes

To

The Judge,
District Munsif Court,
Bhavani.



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S.M.SUBRAMANIAM, J.

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