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C.R.P.No.4361 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4361 of 2022

Raji (Died)

1.Annadurai

2.Anbalagan

3.Valarmathi

[cause-title accepted vide Court order
dated 29.11.2022 made in
C.M.P.No.20343 of 2022
in C.R.P.Sr.8595 of 2020]

... Petitioners

Vs.

C.T.Palanivelu

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 15.10.2019 made in I.A.No.400 of 2019 in I.A.No.1144 of 2013 in O.S.No.224 of 2013 on the file of the District Munsif Court, Harur by allowing this Civil Revision Petition.

For Petitioners

: Mr.G.Saravanan

For Respondent

: Mr. C.Veddiappan



ORDER

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The Civil Revision Petition has been filed, challenging the order dated 15.10.2019 passed in I.A.No.400 of 2019 in I.A.No.1144 of 2013 in O.S.No.224 of 2013 on the file of the District Munsif Court, Harur.

2. The revision petitioners are the defendants in the Suit and the respondent/plaintiff instituted a Suit for recovery of possession and permanent injunction.

3. During the pendency of the Suit, the revision petitioners / defendants filed an application for appointment of an Advocate Commissioner, which was considered and an Advocate Commissioner was appointed. The Advocate Commissioner submitted his report on 27.07.2015. Thereafter, the trial Court granted an opportunity to the parties to submit their objections, if any on the report submitted by the Advocate Commissioner. For the purpose of providing an opportunity to file objections, the suit was adjourned on 16.11.2015, 15.12.2015 and 20.01.2016. Finally, the case was listed by the trial Court on 29.01.2016 and no objection was filed by either of the parties to the suit on that day.



Consequently, the Interlocutory Application in I.A.No.1144 of 2013 was closed on 29.01.2016.

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4. After a lapse of three and half (3 ½) years, the revision petitioners / defendants filed an Interlocutory Application in I.A.No.400 of 2019 in I.A.No.1144 of 2013 to re-open the Interlocutory Application in I.A.No.1144 of 2013 for the purpose of receiving objections. The trial Court considered the issues and arrived at a conclusion that sufficient opportunities were granted to the parties to file their objections and for that purpose, the case was adjourned on three occasions and finally on fourth occasion, on 29.01.2016, the Interlocutory Application in I.A.No.1144 of 2013 was closed. While so, the Interlocutory Application filed after a lapse of three and half (3 ½) years to re-open the Interlocutory Application in I.A.No.1144 of 2013 cannot be entertained. Thus, the Interlocutory Application was rejected by the trial Court.

5. The learned counsel for the revision petitioners mainly contended that mere receipt of the objections would not cause any prejudice to the other party. The Interlocutory Application in I.A.No.400 of 2019 was filed for the purpose of receiving the objections and therefore, the trial Court has



committed an error by not affording an opportunity to the revision petitioners to defend their case.

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6. The learned counsel for the revision petitioners relied on the judgement passed by this Court in the case of **Vemba Gounder Vs. Pooncholai Gounder** reported in [AIR 1996 Mad 347], wherein it has been held as follows:

“ 9. It is on the basis of Sub-rule (33) of “Rule 10 to Order 26, C.P.C., objections to the Commissioner's report are considered, and the Court has to pass an order as to whether it is satisfied with the proceedings of the Commissioner or not. The question of issuing a second Commission is also based on the satisfaction entered by Court. Is the Court competent to issue a second Commission without passing any order under sub-rule (3) of Rule 10, Order 26, C.P.C. This question: has been considered in various decisions of this Court as well as by other High Courts. In one of the earliest decisions of this Court reported in AIR 1922 Madras 219 (Thot-tamma v. C.S.Subramaniyyam), this Court has held thus:--

“The duty of the Court, whenever a Commissioner's report is objected to, is to hear objections in open Court and to decide with the aid of such evidence as it might take if the valuation should be varied and in what direction; but if a Commissioner appointed under O.26,



Civil Procedure Code has so totally misconceived his duties as to render his report and valuation useless as a basis for decision, his report should be superseded and a new Commissioner appointed. A report which is once superseded should not be used after its supersession as a basis for valuation. The practice of appointing successive Commissioners whenever objections are taken the reports should be condemned. ”

7. This Court is of the considered opinion that appointment of an Advocate Commissioner itself is to be made under Order 26 Rule 9 of the Civil Procedure Code for “elucidating any matter in dispute”, which means, an Advocate Commissioner shall be appointed only to eradicate the doubt being arisen in the mind of the Court and not in the mind of the parties to the suit. The parties to the suit may have several doubts regarding the issues and they may make an attempt to collect evidences one way or other to establish their respective cases before the Court concerned. However, the Court cannot appoint an Advocate Commissioner, if the intention of the parties are to collect further evidences or otherwise for the purpose of establishing their case. The parties to the suit are entitled to establish their respective cases through documents and evidences. Thus, an Advocate Commissioner is to be appointed only on certain exceptional circumstances,



where there is a doubt in the mind of the Court or there is a necessity for the purpose of ascertaining certain facts, which all are not placed before the Court. If the Court deems that without the Advocate Commissioner, it would not be in a position to resolve the dispute, then alone the Advocate Commissioner is to be appointed and not otherwise.

8. In the present case, an Advocate Commissioner had already been appointed at the instance of the respondent/plaintiff and the Advocate Commissioner submitted his final report on 27.07.2015 itself. Thereafter, sufficient opportunities were granted to the parties to submit their objections. The case adjourned on three occasions and finally on 29.01.2016, the Interlocutory Application in I.A.No.1144 of 2013 was closed.

9. That being the factum, the revision petitioners/defendants have filed the Interlocutory Application in I.A.No.400 of 2019, after a lapse of three and half (3 ½) years from the date, on which, the Interlocutory Application in I.A.No.1144 of 2013 was closed.



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10. Any attempt by the parties to prolong and protract the suit, at no circumstances, be encouraged by the Courts. The parties are entitled to establish their case through documents and evidences. If such Interlocutory Applications are entertained after a lapse of three and half (3 ½) years, it will result in prolongation of the suit and further would cause prejudice to the other parties. The trial Court has rightly formed an opinion that the objections presented by the revision petitioners in I.A.No.400 of 2019, after a lapse of three and half years from the date of closing of the Interlocutory Application in I.A.No.1144 of 2013 is in consonance with the principles established and there is no infirmity as such.

11. Accordingly, the Civil Revision Petition stands dismissed. No costs.

04.01.2023

skr/kak
Index : Yes
Speaking order
Neutral Citation : Yes

To
The Judge,
District Munsif Court,
Harur.



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S.M.SUBRAMANIAM, J.

skr/kak

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