



C.R.PD.No.1127 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

C.R.PD.No.1127 of 2023

and

C.M.P.No.7877 of 2023

1.Kuttiyammal

Rathinam (died)

2.Narayanan

. . . Petitioners

Versus

Dharmarajan (died)

Rajagopal (died)

1.D.Rajeswari

2.B.Bhuvaneswari

3.D.Baranikumar

4.S.Karpagavalli

5.D.Praburam

Pachaiyammal (died)

6.Radha

D/o.Late Rajagopal

7.Raja

8.Selvam

9.Kumaresan

10.Senthil

11.Jayalakshmi

Ramadass (died)



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12. Madhammal

13. Rajammal

14. Sivagami

15. Radha

D/o. Late Rathinam

16. Kalavathi

17. Kumar

18. Chandran

19. Saravanan

. . . Respondents

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 18.2.2023 made in I.A.No.12 of 2015 in A.S.No.12 of 2014 on the file of the Additional District Judge, Dharmapuri.

For Petitioners : Mr.V.Sakkarapani

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ORDER

This Civil Revision Petition is directed against the dismissal of I.A.No.12 of 2015 in A.S.No.12 of 2014 on the file of the Additional District Court, Dharmapuri filed by the petitioners/appellants for appointment of an Advocate Commissioner, under Order 26 Rule 9 of Code of Civil Procedure, for noting down the physical features.



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2. Heard the learned counsel appearing for the petitioners and perused

the material papers available on record.

3. The respondents have filed O.S.No.20 of 2008 seeking the relief of declaration and for perpetual injunction in respect of schedule of properties. After full-fledged trial, the suit came to be decreed on 15.10.2012. Aggrieved by the said judgment and decree, the petitioners have preferred A.S.No.12 of 2014 on the file of the Additional District Court, Dharmapuri, During the pendency of the appeal, the petitioners filed I.A.No.12 of 2015 for appointment of Advocate Commissioner for noting down the physical features of the schedule of properties and the same was dismissed.

4. The petitioners who are the defendants in the suit though filed an application before the trial Court, seeking to appoint an Advocate Commissioner to note down the physical features, the same was not considered by the trial Court and the same was dismissed. The petitioners/defendants did not prefer any revision, thereby, dismissal of the application for appointment of an Advocate Commissioner have become final. After the suit was decreed, the petitioners have preferred an appeal in A.S.No.12 of 2014 and during the pendency of the appeal, again the petitioners have filed I.A.No.12 of 2015 for



the same relief for appointment of Advocate Commissioner to record the physical features. The petitioner once made an unsuccessful attempt of getting the Advocate Commissioner appointed is not again permitted to make similar attempt in the appeal unless there are change of circumstances. Therefore, on this account, the petitioner is not entitled to seek for appointment of Advocate Commissioner in the Appeal Suit.

5. It is the contention of the petitioners/defendants that the respondents have filed a suit alleging that the suit schedule properties are in S.Nos.12/3 A and 12/6 and northern boundary of the said property belongs to one Rahmankhan. It is also stated that the said Rahmankhan has filed a suit stating that his properties situate in S.Nos.12/3A, 12/3B and 12/6 and thereby, the petitioners want to appoint an Advocate Commissioner to measure and give a report as to in which Survey number, the schedule of properties of the petitioners are situate. The contention of the petitioners/defendants cannot be considered. The petitioners cannot base their claim of defending the suit, basing on the boundaries mentioned by a third party in other suit. The petitioners as defendants have not taken the defence that description of the schedule of properties is incorrect.



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6. Further, the respondents/plaintiffs have filed a suit seeking for declaration, permanent and mandatory injunctions. It is for the respondents/plaintiffs to prove their case that they are the owners of the schedule of property and that they are entitled for injunction, as prayed for. After full fledged trial, the trial Court has felt that there is no ambiguity in the schedule of properties mentioned by the plaintiffs in the suit. In view of the above, Appeal Court has rightly dismissed the application by way of the impugned order. Therefore, the same cannot be intervened.

7. Accordingly, this **Civil Revision Petition is dismissed.** No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

19.04.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No

ms/mvs.



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DR.D.NAGARJUN, J

ms/mvs.

To

The Additional District Judge,
Dharmapuri.

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