



C.R.P.No.1830 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.11.2023

CORAM

THE HONOURABLE MR.JUSTICE T.V.THAMILSELVI

C.R.P.No.1830 of 2023

and

C.M.P.No.11771 of 2023

1. V.Indhirani
2. V.Senthil Nathan
3. K.Sasikala

... Petitioners

Vs.

1. A.Rajammal
2. N.Maragathamani
3. Punniavathy
4. N.Hemalatha
5. Geetha
6. R.Dharshini
7. V.Selvaraj
8. S.Malathy
9. S.Ravi

... Respondents



C.R.P.No.1830 of 2022

Prayer: Criminal Original Petition filed under Article 227 of the Constitution of India, to set aside the impugned order dated 14.03.2023 passed in I.A.No.2 of 2022 in I.A.No.1 of 2019 in O.S.No.38 of 2004 by the learned V Additional District Judge, Coimbatore and this Hon'ble Court may be further pleased to appoint another Advocate Commissioner to inspect the suit property, after issuing notice to all the parties concerned and grant opportunity to them to be present during the inspection of the suit property for division.

For Petitioners

: Mr.P.V.Sabaridas

ORDER

The Civil Revision Petition has been filed to set aside the impugned order dated 14.03.2023 passed in I.A.No.2 of 2022 in I.A.No.1 of 2019 in O.S.No.38 of 2004 by the learned V Additional District Judge, Coimbatore.

2. The first respondent filed a Suit in O.S.No.38 of 2004 and a preliminary decree of partition was passed by judgment dated 31.08.2006. While so, to implement the said final decree, the respondents have filed application in I.A.No.1 of 2019 in which Mr.C.Magesh, was appointed as



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Advocate Commissioner. But the said Advocate Commissioner had issued notice to the respective counsels to the Suit during the Pongal festival time. Hence, the defendants are not able to co-operate with the same. Without the presence of the defendants, the Advocate Commissioner had measured the property and submitted the report. Soon thereafter, the defendants have raised an objection by stating that during their presence, the property is to be surveyed by filing the application in I.A.No.2 of 2022, praying to reopen the same. But the Trial Court had dismissed the said application by stating that the Suit was filed in the year 2004 and with an intention to delay the proceedings and that the defendants had not co-operated for measuring the property. However, it is contested that the defendants are interested in proceeding with the matter but the Advocate Commissioner had measured the property during the Pongal festival time, hence they are not be able to be present.

3. On perusal of the record, it is revealed that the inspection date fixed by the Advocate Commissioner was on 16.01.2021, which is a festival time, in which the people in the Tamil Nadu will be engaged in their own function. So the date fixed by the Assistant Commissioner is not suitable. However, he



had measured the property in the absence of the defendants and hence, opportunity was also not given to the defendants, who all are also having right in the property. Thus, the Trial Judge had erroneously dismissed the request made by the defendants. As such, the impugned order dated 14.03.2023 passed in I.A.No.2 of 2022 in I.A.No.1 of 2019 in O.S.No.38 of 2004 by the learned V Additional District Judge, Coimbatore is set aside. As there was a dispute arouse between the Advocate Commissioner and the parties, in order to avoid further complication, the Trial Judge is directed to appoint a new Advocate Commissioner and the defendants are given opportunity to co-operate with the Advocate Commissioner, who in turn is directed to issue notice to both the parties and measure the same with the help of a Surveyor. Since the matter is reopened at the instance of the defendants, they are permitted to pay the Assistant Commissioner's fees fixed at the earlier stage. The Advocate Commissioner is directed to measure the property and submit the report within a period of six months after that the Trial Judge is directed to dispose of the matter as early as possible.

4. With these directions, the Civil Revision Petition stands disposed



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of. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No



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T.V.THAMILSELVI, J.

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