



C.R.P.No.4030 of 2023

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4030 of 2023

and

C.M.P.No.24650 of 2023

Narayanan

... Petitioner

-Vs-

1. Varatharajapillai
2. Vaithiyalingam
3. Arunachalam

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 20.04.2023 passed in I.A.No.1 of 2023 in A.S.No.15 of 2022 on the file of Principal Subordinate Judge at Dharmapuri.

For Petitioner : Mr.M.Selvam

ORDER



C.R.P.No.4030 of 2023

Challenging the impugned order passed in I.A.No.1 of 2023 in A.S.No.15 of 2022 passed by the learned Principal Subordinate Judge, Dharmapuri, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the appellate judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner/plaintiff filed a suit in O.S.No. 225 of 2012 against the defendants 1 to 3 for the relief of declaration and the same was dismissed. Against which, he preferred an appeal in A.S.No.15 of 2022. During the pendency of appeal proceedings, he filed an application under Order 39 Rule 1 and 2 and Sec.151 of C.P.C. praying to grant interim injunction as if the defendants caused interference. But the appellate judge erroneously dismissed the application holding that the application for appointment of advocate commissioner to note down the physical features was not filed before the trial court and for proving their possession, the advocate commissioner cannot be appointed. Challenging the said findings, the revision petitioner/plaintiff preferred this Civil Revision Petition.



C.R.P.No.4030 of 2023

4. Records perused. On perusal of entire facts, it would reveals that the appellate judge wrongly held that the application was filed for appointment of advocate commissioner, however, it was filed seeking for the relief of interim injunction. Hence, the observation made by the appellate judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the appellate judge in I.A.No.1 of 2023 in A.S.No.15 of 2022 is set aside and the appellate judge is directed to hear the application, which was filed seeking for the relief of interim injunction by giving notice to the respondents and dispose the same as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.11.2023

Index : Yes/No

Speaking Order : Yes/No

rpp

To

The Principal Sub-Judge, Dharmapuri.



WEB COPY



C.R.P.No.4030 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P.No.4030 of 2023

21.11.2023