



C.R.P.No.2420 of 2023 &
C.M.P.No.15144 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2023

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2420 of 2023 &
C.M.P.No.15144 of 2023

1. Durairaj
2. Dharmaraj

... Petitioners

Vs.

1. Chellammal
2. Senthamizh Selvan
3. Duraimurugan
4. Saravanan
5. Senthilkumar

...Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India
to set aside the fair and decretal order dated 28.11.2022 made in I.A.No.2 of
2021 in O.S.No.235 of 2021 passed by the Sub Court, Jayankondam.

For Petitioners : Mr. M.Senthil Vadivu



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ORDER

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The present Civil Revision Petition has been filed to set aside the fair and decreetal order dated 28.11.2022 made in I.A.No.2 of 2021 in O.S.No.235 of 2021 passed by the Sub Court, Jayankondam.

2. The petitioners are the plaintiffs and the respondents are the defendants in the suit in O.S.No.235 of 2021. The petitioners filed a suit for declaration and permanent injunction restraining the respondents or their men or agents from alienating / interfering the suit property. Pending suit, I.A.No.2 of 2021 was filed by the petitioners / plaintiff to appoint an advocate commissioner to inspect the suit property and note down the physical features with the assistance of the surveyor and to file a report and plan. The said I.A. Was dismissed, as against the same, the petitioners have come up with the present petition.

3. The learned counsel for the petitioners would submit that the court below erroneously dismissed the application on the ground that it is an attempt to collect evidence through an advocate commissioner to prove his case and further held that in the earlier suit ex parte decree was passed against the petitioners and the advocate commissioner had already filed his



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report and plan in the earlier suit.

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4. Further, the learned counsel for the petitioners submits that the Advocate Commissioner, who was appointed in the earlier suit, had not properly measured the suit property and he failed to mention some important particulars in his report. However, the petitioners and the respondents raised their objections to the report, then, the petitioners filed the application to reissue the warrant, which was dismissed. As against which a CRP was preferred and the same was dismissed.

5. Lastly, the learned counsel for the petitioners also submits that the court below ought to have seen and held that non identification of the suit property will not help the court in effectively deciding the main dispute between the parties and further, no prejudice would be caused to the respondents herein by appointing the advocate commissioner, hence pleaded to allow the present petition.

6. Heard the learned counsel for the petitioners and perused the documents placed on record.



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7. It is pertinent to point out that the petitioners are ranked as defendants 3 and 4 in the earlier suit, viz., O.S.No.210 of 2006 and the petitioners' father, viz., Chozharajan was ranked as 1st defendant. The said suit with regard to the petition mentioned property was filed by the respondents, against the petitioners for declaration and injunction in respect of the suit property. Since there was no representation on behalf of the petitioners, and the said suit was decreed in favour of the respondents in the year 2014. In the year 2006, while pending suit, the petitioners have preferred a petition for appointment of advocate commissioner to inspect the suit property and to note down the physical features. Accordingly, the advocate commissioner was appointed and filed his report and plan on 20.07.2010. The petitioners have filed I.A.No.579 of 2014 for appointment of another advocate commissioner and the same was dismissed on 05.07.2014.

8. Moreover, as against the said order, the petitioners have preferred CRP PD No. 4794 of 2017 and the same was dismissed. While that being the case, though the petitioners are parties to the suit in O.S.No.210 of 2006 have not even mentioned about the same in the present petition, however, the petitioners, again filed the present suit in respect of the subject mentioned



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property and taken out another application for appointment of advocate commissioner to inspect the suit property and note down the physical features with the assistance of the surveyor, which cannot be allowed, the court below by taking note of the same has rightly dismissed the said petition, which is free from any flaw.

In view of the above, the present Petition is dismissed at the admission stage. Consequently, connected miscellaneous petition is closed. No costs.

19.07.2023

Index : Yes/No
Internet : Yes/No
Speaking order / non speaking order
ssd



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V.BHAVANI SUBBAROYAN, J.,

ssd

To

The Sub Court, Jayankondam.

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