



C.R.P.No.3844 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

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

C.R.P.No.3844 of 2023
and
C.M.P.No.23780 of 2023

R.Hrisikesan (deceased)

1. H.Gnansekaran
2. H.Rangasamy
3. H.Ranganayaki

... Petitioners

-Vs-

1. J.Devarajan
2. D.Venugopal
3. D.Kirubakaran
4. D.Padmanabhan
5. J.Dharmalingam
6. D.Dhanasekaran
7. J.Gopalakrishnan

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the docket order dated 15.03.2023 passed in an unnumbered I.A.No..... of 2023 in O.S.No.742 of 2016 on the file of First Addl. Munsif, Salem by allowing this C.R.P.



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For Petitioner

: Mr.Nanchill J.Rajkumar

ORDER

Challenging the impugned docket order passed in an unnumbered I.A.No.....of 2023 in O.S.No.742 of 2016 passed by the learned I Addl. District Munsif, Salem, the Revision Petitioners/plaintiffs preferred this Civil Revision Petition.

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

3. Before the trial court, the Revision Petitioners/Plaintiffs filed an application to appoint an advocate commissioner to note down the physical features and demarcate the specific 4 x 107 vacant site with meats and bounds. That application was rejected by the trial judge before numbering itself. The reasons assigned by the trial judge is that the suit is 7 years old and the plaintiffs filed the said application after 7 years instead of filing the said application at the earlier stage. Therefore, the application



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was rejected. Challenging the said findings, the plaintiffs preferred this Civil Revision Petition.

4. Records perused. Admittedly, the trial was begun and at that time, the plaintiffs filed the said application and not in the prior stage. The plaintiffs filed a suit for declaration and other consequential relief in the suit, more particularly, declaring the right of user of the suit road, in which they have perfected by title and possession. But, the defendants have denied the plaintiffs claim over the property. Hence, the necessity arose for the plaintiffs to file the said application for appointment of advocate commissioner to note down the physical features and to demarcate the specific extent of vacant site with meats and bounds. Though the said application was filed by them in the suit after lapse of 7 years, opportunity is to be given to the plaintiffs to prove their claim over the suit property. If such opportunity is not given to them, their valuable right to defend the case will be defeated. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in the docket order in an unnumbered application I.A.No..... of 2023 in O.S.No.742 of 2016 is set aside and the said application is ordered to be numbered. Thereafter, the



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trial judge is directed to take the application on file and dispose the same on merits on issuing notice to the respondents as well as giving opportunity of hearing to them within a period of four weeks from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
rpp

To

I Addl. District Munsif, Salem.



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T.V.THAMILSELVI, J.

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