



C.R.P.No. 4103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4103 of 2023

and

C.M.P.No. 25054 of 2023

Rani

.. Petitioner

Vs

Sagunthala

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order of the Subordinate Judge, Thittagudi in I.A.No.413 of 2019 in O.S.No.12 of 2018 order dated 23.03.2023 pending on the file of the Subordinate Court at Thittagudi.

For Petitioner : Mr. G. Anabayachozhan

ORDER

This Civil Revision Petition is filed challenging the impugned order passed in I.A. No. 413 of 2019 in O.S.No.12 of 2018, the plaintiff has



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preferred this revision.

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2. Before the trial Court, the plaintiff / petitioner herein filed the suit for declaration and other consequential relief. During pendency of the proceeding, the plaintiff / petitioner herein filed I.A.No.413 of 2019 for appointment of Advocate Commissioner to inspect the suit property with the help of surveyor. According to the petitioner, inspite of the interim order, the defendant / respondent herein constructed building and to show the same, she wants to appoint Advocate Commissioner to note down physical features with the help of the surveyor. Furthermore, she also filed application to make amendment in the suit in respect of the subsequent encroachments made by the defendant / respondent herein but the trial Judge dismissed the said application holding that the reason assigned for the appointment of Advocate Commissioner is not properly explained and also not accepted the contention of the plaintiff / petitioner herein that she was out of station. Accordingly, the trial Judge dismissed the application.

3. The learned counsel for the petitioner submits that she filed the suit for declaration. The trial Court made an observation that as per the



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contention of the defendant / respondent herein, the portion of the property was already constructed before filing of the suit. Based on such observation, the trial Judge not inclined to appoint Advocate Commissioner. The learned counsel further submits that already construction was only subsequent and without any evidence it cannot be conclude that the property was constructed before the suit.

4. According to the plaintiff / petitioner herein, at the time of filing of the suit there was a vacant site. Therefore, if opportunity is not given to the plaintiff / petitioner herein to put forth her defence before the Court, as she approached the Court for the relief of declaration, her valuable right to protect the property will be defeated. However, the trial Judge failed to appreciate that and erroneously dismissed the application.

5. Accordingly, the finding of the trial Court in I.A.No.413 of 2019 in O.S.No.12 of 2018 is set aside and this Civil Revision Petition is allowed. The trial Court namely Subordinate Judge, Thittagudi is directed to appoint an Advocate Commissioner, within two weeks from the date of receipt of



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copy of this order, for the reason that the defendant is senior citizen and then proceed with the trial, as per the manner known to law. No costs.

Consequently, connected miscellaneous petition is closed.

23.11.2023

Index :Yes/No

Neutral Citation :Yes/No

AT

To

The Subordinate Court at Thittagudi.



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T.V.THAMILSELVI, J.

AT

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