



WEB COPY



CRP.No.2687 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.No.2687 of 2019 and
CMP.No.17722 of 2019

1.Thangammal

2.Arumugam

3.Pappathi

4.Manoj Raj(Minor)

rep. by natural guardian Mother Pappathi

... petitioners

Vs.

Rajeshkannan

... Respondent

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order in IA.No.173 of 2018 in IA.No.288 of 2012 in OS.No.84 of 2012 dated 26.06.2019 passed by the learned District Munsif Court, Dharmapuri and thereby allow the above civil revision petition.

For Petitioners : Mr.B.Sundarapandiyan

For Respondent : Mr.M.Manohar

ORDER

This civil revision petition has been filed to set aside the fair and decretal order in IA.No.173 of 2018 in IA.No.288 of 2012 in OS.No.84 of 2012 dated 26.06.2019 passed by the learned District Munsif Court, Dharmapuri, thereby dismissed the petition filed for extension of time.



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2. The petitioners are the plaintiffs and the respondent is the defendant.

The petitioners filed suit for declaration and injunction. While pending the suit, the petitioners filed application seeking appointment of advocate commissioner and the same was allowed, thereby one, Mr.M.Muniraj was appointed as Advocate Commissioner in order to inspect the suit property and to note down the physical features of the suit property and the petitioners were directed to pay a sum of Rs.2,000/- as advocate commissioner's remuneration. Accordingly, they had paid. The Advocate Commissioner did not inspect the property and failed to file any report. Therefore, the court below directed the said Advocate Commissioner to return the remuneration and appointed another advocate commissioner and fixed remuneration of Rs.2,000/- payable by the petitioners. However, the petitioners failed to pay the said remuneration and as such, the advocate commissioner application was closed. After a period of three years, the petitioners filed the application under Section 148 of CPC for extension of time to pay remuneration to the Advocate Commissioner. However, it was dismissed on the ground of delay.

3. The learned counsel for the petitioners would submit that still the suit is pending without commencement of trial. Therefore, no prejudice would be caused to the respondent if the petitioners are directed to pay the remuneration. He



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further submitted that he is ready and willing to pay remuneration of Rs.5,000/- to the advocate commissioner.

4. Considering the above facts and circumstances of the case, the fair and decretal order in IA.No.173 of 2018 in IA.No.288 of 2012 in OS.No.84 of 2012 dated 26.06.2019 passed by the learned District Munsif Court, Dharmapuri is set aside and the petitioners are directed to jointly pay remuneration of Rs.5,000/- (Rupees Five Thousand only) to the said Advocate Commissioner on or before 15.02.2023. On receipt of the said remuneration, the Advocate Commissioner is directed to comply with the warrant issued by the trial court and submit his report as expeditiously as possible.

5. With the above directions, this civil revision petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

09.02.2023

Speaking/non-speaking

Index : Yes/No

Internet : Yes

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Note: Issue order copy on 13.02.2023



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G.K.ILANTHIRAIYAN, J.

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To
The learned District Munsif Court,
Dharmapuri

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