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C.R.P.No.3683 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

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

C.R.P.No.3683 of 2023

and

C.M.P.No.23107 of 2023

1. S.Chinnaraj
2. C.Rani
3. C.Balaji

... Petitioners

-Vs-

Amaresan

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order passed by the learned Addl. District Munsif at Cheyyar dated 01.09.2023 passed in I.A.No.2 of 2023 in O.S. No.2 of 2018.

For Petitioner : Mr.V.Thamizh Selvan

ORDER

Challenging the impugned order passed in I.A.No.2 of 2023 in O.S.No.2 of 2018, on the file of Addl. District Munsif at Cheyyar, the Revision Petitioners/defendants preferred this Civil Revision Petition.



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2. Since the relief sought challenging the order passed by the trial court, notice to the respondent is dispensed with.

3. Before the trial court, the plaintiff filed a suit in O.S.No.2 of 2018 seeking for the relief declaration and to hand over possession of C and D of suit schedule properties and also for permanent injunction. The right of plaintiff was denied by the defendants. The trial was commenced and the suit is posted for plaintiff side evidence, at that time, the defendants filed an Interlocutory Application in I.A.No.2 of 2023 seeking to appoint an advocate commissioner, to visit the properties and to measure the suit properties with the help of surveyor and also to rectify the error committed by the Advocate Commissioner in the earlier report. That application was objected by the plaintiff stating that already an Advocate Commissioner was appointed and report was also filed. However, when the said report was in force, the defendants have not specifically stated what is the error committed by the advocate commissioner in the earlier report and also without filing any objections to the report before the trial court, they have filed another application praying to appoint a fresh Commissioner, as such



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is not at all acceptable one. Considering submissions of both sides, the trial judge held that already Advocate Commissioner was appointed and report of commissioner is pending for consideration before it. In the said circumstances, a fresh advocate commissioner cannot be appointed without recusing the earlier report and to that effect, but the defendants have not filed any application. Therefore, the application filed by the defendants praying to appoint a fresh advocate commissioner is not sustainable one and accordingly, it was dismissed. Challenging the said findings, the defendants filed the present Civil Revision Petition.

4. The learned counsel for Revision Petitioners would submit that for the earlier commissioner's report, they have submitted their objections, but it was not taken for consideration by the trial court. So, they have filed the said application to appoint a fresh advocate commissioner.

5. Records perused. On perusal of records, it reveals that at the time of trial, the defendants have filed the application to appoint a fresh advocate commissioner, but as per the records, already a Commissioner report was pending before the trial court and until the said report was



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recused by the court, a fresh Advocate Commissioner cannot be appointed.

Therefore, the observations made by the trial judge is acceptable one.

However, the suit is pending from the year of 2017 and the defendants have claimed right over the property. If at all, opportunity is not given to them, their valuable right over the property would be defeated. Hence, liberty is granted to the defendants to file a recuse application or set aside the earlier commissioner report and if such application is filed, the trial judge is directed to take the application on file, proceed with the matter as per manner known to law and dispose the same on merit as expeditiously as possible. With the said direction, this Civil Revision Petition is ordered. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.10.2023

Index : Yes/No

Speaking Order : Yes/No

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N.B. :- Issue order copy on 16.10.2023

To

The Addl. District Judge, Cheyyar.



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T.V.THAMILSELVI, J.

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