



C.R.P.No.3731 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE **V. LAKSHMINARAYANAN**

C.R.P.No.3731 of 2019
and C.M.P.No. 24495 of 2019

K.S.Palanisamy .. Petitioner

VS

K.S.Sundaram .. Respondent

Petition filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.2 of 2019 in O.S.No.109 of 2019 on the file of District Munsif cum Judicial Magistrate Court, Perundurai dated 18.09.2019.

For Petitioner : Mr.A.Sundaravadhanan

For Respondent : Mr.S.Kaithamalai Kumaran

ORDER

This Civil Revision Petition arises against the order dated 18.09.2019 made in I.A.No.2 of 2019 in O.S.No.109 of 2019 on the file of District Munsif cum Judicial Magistrate Court, Perundurai.



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2. The civil revision petitioner on anticipating a suit will be filed by the respondent preferred a caveat in Caveat O.P.No.37 of 2019. The suit was presented on 16.09.2019. The caveat was to expire on 27.11.2019. In the meantime, an interlocutory application was moved in I.A. No.2 of 2019 for appointment of advocate commissioner. Without giving notice to the caveator, the application was allowed. It is pertinent to point out that on 18.09.2019 the date on which the commissioner was appointed the learned Trial Judge originally recorded that notice be issued to the respondent. Subsequently, he has struck off the order and appointed an advocate as commissioner. The power of the Court to appoint the advocate commissioner ex parte is not in dispute. The advocate commissioner who is so appointed would have to be cautious to issue notice prior to inspection. However that does not mean that when caveat has been lodged, the Court can pass an order without hearing the caveator. This is the purport of Section 148A (3) C.P.C.

3. Learned counsel on either side would submit that the matter is posted on 30.08.2023. Nonetheless, illegality of the order having been brought to my notice, I am not in a position to sustain the same. The order appointing the advocate commissioner is



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therefore set aside. The civil revision petition is allowed. No costs.

Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
Neutral Citation:Yes/No
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To

The District Munsif cum Judicial Magistrate,
Perundurai.



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