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C.R.P.No.4154 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2023

CORAM:

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

C.R.P.No.4154 of 2023

and

C.M.P.No.25349 of 2023

1. Manoharan
2. Muthukrishnan

... Petitioners

-Vs-

Meiyappan @ Meiyar

... Respondent

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 09.06.2023 passed in I.A.No.03 of 2023 in O.S.No.374 of 2015 (CRN.No.TNPB04-000401-2015) on the file of Addl. District Munsif Court, Perambalur.

For Petitioners

: Mr.P.Mani



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C.R.P.No.4154 of 2023

ORDER

Challenging the impugned order passed in I.A.No.3 of 2023 in O.S.No.374 of 2015 passed by the learned Addl. District Munsif, Perambalur, 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 respondent is dispensed with.

3. Before the trial court, the Revision Petitioners filed an interlocutory application in I.A.No.3 of 2023 in O.S.No. 374 of 2015 under Order 26 Rule 9 and Sec.151 of C.P.C. praying to appoint an advocate commissioner to note down the physical features and to measure the property, more particularly, with respect to Odai situated on the western side of 'B' schedule property. That application was dismissed by the trial judge stating that after the commencement of trial, the said application was filed with new facts, as such is not permissible. Challenging the said findings, the plaintiff preferred this Civil Revision



C.R.P.No.4154 of 2023

Petition.

WEB COPY

4. The learned counsel for Revision Petitioners would submit that while filing the suit, they have mentioned about the said odai in the plaint plan, which was annexed at page No.28 of typed set of papers to prove the existing features. So, the necessity arose for him to appoint an advocate commissioner, but the trial judge failed to consider the same and erroneously dismissed the application. Hence, he prayed to set aside the findings of the trial judge.

5. Records perused. On perusal of plaint plan annexed at page no.28 of the typed set of papers, it reveals that the Revision Petitioners have mentioned the existence of odai in the rough plan and as per the prayer in the plaint, they have claimed injunction against the defendant not to cause interference in the enjoyment of 'B' schedule common pathway. But, the defendant claimed that it is not a common pathway. So, to prove the existence of pathway as well as physical features in and around the suit property, the report of the Advocate Commissioner is necessary and it would also minimise the work of court. Therefore, the trial judge ought to



C.R.P.No.4154 of 2023

have given opportunity to the plaintiffs to prove their claim. But the same was not properly appreciated by the trial judge and dismissed the application, which would lead to miscarriage of justice. Hence, the observation made by the trial judge is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.3 of 2023 in O.S.No.374 of 2015 is set aside and the said application is ordered to be allowed. The trial judge is directed to appoint an advocate commissioner within a period of two weeks from the date of receipt of copy of this order and to proceed with the matter by giving opportunity to the defendant to file his additional written statement, if any and proceed with the trial as per manner known to law. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

08.11.2023

Index : Yes/No
Speaking Order : Yes/No
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To

Addl. District Munsif, Perambalur.



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C.R.P.No.4154 of 2023

T.V.THAMILSELVI, J.

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C.R.P.No.4154 of 2023

08.11.2023