



WEB COPY



C.R.P.No.4517 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2023

CORAM:

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

C.R.P.No.4517 of 2023

and

C.M.P.No.27061 of 2023

Aarathal

... Petitioner

-Vs-

1. Kaliyammal
2. Chinnathambi
3. Kanagaraj

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 02.09.2023 passed in I.A.No.01 of 2023 in A.S.No.13 of 2022 on the file of Subordinate Judge, Udumalpet.

For Petitioner : Mr.S.Sidhartha Vishnu

ORDER

Challenging the impugned order passed in I.A.No.1 of 2023 in A.S.No.13 of 2022 passed by the learned Sub-Judge, Udumalpet, the Revision Petitioner/appellant preferred this Civil Revision Petition.



C.R.P.No.4517 of 2023

2. Since the relief is claimed challenging the order passed by the appellate judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner filed a suit in O.S.No. 232 of 2012 against the defendants for the relief of declaration in respect of cart track as well as permanent injunction. The said suit was dismissed by the trial judge. Against which, she preferred an appeal in A.S.No.13 of 2022. Pending appeal, she filed an application in I.A.No.1 of 2023 praying to appoint an advocate commissioner to note down the physical features and also find out whether any alternative pathway is available on ground. That application was dismissed by the appellate judge stating that the plaintiff ought to have taken steps to file the said application before the trial court, instead of that, to drag on the proceedings, now she filed the present application as such is not permissible under law. Challenging the said findings, the Revision Petitioner/appellant preferred this Civil Revision Petition.

4. Records perused. On perusal of records, it reveal that before the trial court, the Revision Petitioner/appellant has not taken any steps to file an application for appointment an advocate commissioner. But on seeing the facts, the relief claimed by her in the suit for the relief of declaration,



C.R.P.No.4517 of 2023

more particularly, with regard to 'B' schedule cart track. Before the trial court, the respondents/defendants filed an application for appointment of advocate commissioner, but the same was dismissed. So, to prove the physical features, as she had filed a suit, the appellant is entitled to file an application. Though she has not filed the application before the trial court, the appellate court can also consider the said application. Therefore, she is entitled to file the said application, but without considering her submissions, the appellate judge dismissed the application, as such is erroneous one and the same is liable to set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.1 of 2023 in A.S.No.13 of 2022 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. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.12.2023

Index : Yes/No

Speaking Order : Yes/No

rpp

To

The Sub-Judge, Udumalpet.



WEB COPY



C.R.P.No.4517 of 2023

T.V.THAMILSELVI, J.

rpp

C.R.P.No.4517 of 2023

14.12.2023