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C.R.P.No.4809 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

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

C.R.P.No.4809 of 2023

and

C.M.P.No.28542 of 2023

1. Parambath Anupama

2. T.C.Valsarajan

... Petitioners

-Vs-

1.P.Sanku

2. Leela

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 16.02.2023 passed in I.A.No.384 of 2021 in O.S.No.14 of 2020 on the file of Sub-Judge, Mahe.

For Petitioner

: Mr.R.Krishna Prasad

ORDER

Challenging the impugned order passed in I.A.No.384 of 2021 in O.S.No.14 of 2020 passed by the learned Sub-Judge, Mahe, the Revision Petitioners/defendants preferred this Civil Revision Petition.



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

3. Before the trial court, the respondents/plaintiffs filed an application in I.A.No.384 of 2021 to appoint an advocate commissioner to note down physical features. That application was objected by the revision petitioners/defendants. On hearing both side submissions, the trial judge closed the application holding that already the advocate commissioner filed an interim report. However, the trial judge made an observation that the respondents/defendants have lost their opportunities to defend the case regarding the physical feature and extent of property at any cost. Challenging that observation, the Revision Petitioners/defendants preferred this Civil Revision Petition.

4. Records perused. On perusal of records, it reveals that now the suit is pending for recording evidence and at this stage, the respondents/plaintiffs filed an application for appointment of advocate commissioner to note down the physical features. When the trial court closed the same, made an observation that the respondents/defendants lost



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their opportunities to defend the case as such is unwarranted one.

Considering the fact that as on date, the suit is pending and the Revision Petitioners/defendants are entitled to raise all their defence before the trial court. If at all, any defence taken by the parties, the trial judge is entitled to decide the same at the end of suit, but not to make any observation during the pending stage of proceedings. Accordingly, this Civil Revision Petition is allowed and the observation made by the learned trial judge in I.A.No.384 of 2021 in O.S.No. 14 of 2020 that “the respondent lost his opportunities to defend the case regarding the physical feature and extent of the property at any cost” is ordered to be deleted. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2023

Index : Yes/No

Speaking Order : Yes/No

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To

The Sub-Judge, Mahe.



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T.V.THAMILSELVI, J.

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