



C.R.P(MD)No.1739 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.R.P(MD)No.1739 of 2014
and M.P(MD)No.1 of 2014

1.Thulasi Ammal

2.Jegan Mohan (Died) ... Petitioners/ Petitioners/Plaintiffs

3.Madhan Mohan

4.J.Raj Mohan

5.J.Ravindra Mohan

(P3 to P6 are brought on record as LRs

of the deceased P2 vide Court order, dated

31.03.2023, in CMP(MD)Nos.4125&4127/2023) ... Petitioners

.Vs.

1.M/s.Andavar Perfumery Works,
Rep. by B.Kaliyamoorthy

2.Deepak Krishna

3.B.Vatchala

4.B.Natarajan

5.Kanna @ Syed Ibrahim (died)

6.Bharath State Bank,

Rep. by its Secured Assets Recovery Branch,

Administrative Division, Group II, No.7,

Mc.Donald's Road, Tiruchirapalli. ... Respondents / Respondents/

Defendants 1 to 6



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7.Vanitha

8.Shabass

(R7 & R8 are brought on record as LR's of deceased
R5 vide Court order, dated 25.09.2023,
in CMP(MD)No.10267 to 10269/2023)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 14.03.2014, made in I.A.No.742 of 2012, in O.S.No.1101 of 2012, on the file of the I Additional District Munsif, Tiruchirappalli.

For Petitioners :Mr.P.Thiayarajan

For Respondents :Mr.K.Senthil for R1, R3& R4

: No appearance for R2

: Mr.K.Hema Karthikeyan for R5

ORDER

The Revision is at the instance of the plaintiff who took out an application in I.A.No.742 of 2012 in O.S.No.1101 of 2012, seeking appointment of an Advocate Commissioner. Despite the defendants stating that the suit property can be measured, however, with the assistance of the Central Land Surveyor, the trial Court has dismissed the application holding that the Commissioner cannot be appointed to collect



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the evidence and to find out, who is in possession. The Revision is directed against the instant order, dismissing the application seeking an appointment of Advocate Commissioner on the grounds that the application was not filed for the purpose of collecting evidence or to decide factum of possession. According to the revision petitioner, unless the Advocate Commissioner was appointed, the real controversy between the parties cannot be effectively adjudicated.

2. Per contra, the learned counsel for the respondents would submit that pending the Revision, the suit itself was dismissed for default and only an application to restore the suit has been filed and the same is pending and even notice has not been ordered in the said application to restore the suit.

3. Be that as it may, considering that the suit is not pending as on date, no useful purpose will be served in keeping this revision pending as it has arisen against an order in an Interlocutory Application in the said suit. However, at the same time, considering the respective contentions of the parties and the necessity for seeking appointment of Advocate Commissioner, at the first instance, subject to outcome of the



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application to restore the suit to file, the plaintiff / revision petitioner herein, is given liberty to move a fresh application for appointing an Advocate Commissioner, if so advised as and when if the suit is restored to file and on filing such application, without being influenced by the impugned order in the revision, the trial Court shall decide, the same on merits and in accordance with law, after hearing all the parties concerned.

4. The instant Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.10.2023

Index:Yes/No
Internet:Yes/No
NCC:Yes/No
Ls

To

1. The I Additional District Munsif,
Tiruchirappalli.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

Ls

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