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CRP No.318 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

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1.C.Pachaiappan

... Petitioners

2.P.Kumudha

Vs.

G.Pachaiappan (Deceased)

1.P.Meena

2.P.Senthil Kumar

3.C.Valarmathi

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records and set aside the order passed in IA No.7 of 2023 in OS No.2443 of 2015 dated 08.01.2024 on the file of XVI Assistant City Civil Court, Chennai.

For Petitioner

: Mr.P.Devi Sai Monica



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ORDER

The civil revision petition is filed to call for the records and set aside the order passed in IA No.7 of 2023 in OS No.2443 of 2015 dated 08.01.2024 on the file of XVI Assistant City Civil Court, Chennai.

2. The petitioners are the plaintiffs and the respondents are the defendants 1 and 2 in OS No.2443 of 2015 on the file of the XVI Assistant City Civil Court, Chennai. The suit was filed for permanent injunction against the respondents/defendants 1 and 2 since the defendants were interfering with the peaceful possession, enjoyment and free ingress and egress of the four feet common passage adjoining to the plaintiffs' plaint schedule mentioned property. During the pendency of the case, the respondents/defendants 1 and 2 had filed an application to appoint an advocate commissioner to measure the land mentioned in the plaint schedule properties and to note the physical features and to find out the sewerage line. The said application was allowed and an advocate commissioner was



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appointed and he has filed a report. To the said report, the petitioners had filed an objection. Thereafter, the petitioners have filed another application in IA No.7 of 2023 before the Trial Court to appoint another Advocate Commissioner to inspect the common passage, which was used by the petitioners for more than 25 years. The Trial Court, by order dated 08.01.2024, had dismissed the said application. Challenging the said dismissal order passed by the Trial Court, the petitioners have filed the present civil revision petition.

3. Learned counsel for the petitioner submits that appointment of another Advocate Commissioner is necessary to inspect the common passage, which was used by the petitioners for more than 25 years. Hence, the order passed by the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioners and perused the materials available on record.



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5. It is not disputed that the petitioners/plaintiffs have filed the suit seeking permanent injunction against the respondents/defendant 1 and 2, to not to interfere with the peaceful possession, enjoyment and free ingress and egress of the four feet common passage adjoining to the plaintiffs' suit schedule property. Further, it is not disputed that the respondents/defendants 1 and 2 had filed an application for appointment of an advocate commissioner. The said application was allowed and an advocate commissioner was appointed and he filed a report about the physical features of the plaint schedule properties. For that, the petitioners had filed an objection. At this stage, without setting aside the earlier advocate commissioner's report, the petitioners have filed another application. The learned Judge had rejected the said application by passing the impugned order on the ground that the case is pending for more than nine years and being a suit for permanent injunction, the second advocate commissioner need not be appointed.



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6. In a suit for permanent injunction, the petitioners/plaintiffs have to prove their possession and enjoyment in the plaint schedule properties. The petitioners cannot collect evidence through advocate commissioner. Apart from this, in this case, an advocate commissioner was appointed earlier and he had filed a detailed report with regard to the physical features of the plaint schedule properties. Under these circumstances, the second application for appointment of an advocate commissioner is unwarranted. I find no infirmity in the order passed by the trial court. There are no merits in the civil revision petition.

7. In fine, the civil revision petition stands dismissed. There will no order as to costs. Consequently, CMP No.1490 of 2024 is closed.

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Index: Yes/No
Internet: Yes/No
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V.SIVAGNANAM, J.

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