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CRP. PD.Nos.2484 & 2712 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD.Nos.2484 & 2712 of 2018
and CMP. No.15240 of 2018

Kannan

... Petitioner in both CRPs

Vs

Selvam (Died)

1.Tmt.N.Shanmuga Vadivu

2.S.Alagarasan

3.S.Aruna

4.K.Sathyamoorthi

... Respondents in both CRPs

COMMON PRAYER: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 21.02.2018 passed by the II Additional Sub Judge, Salem in I.A. Nos.546 & 547 of 2017 in O.S. No.178 of 2013.

For Petitioner : Mr.L.Mouli in both CRPs

For Respondents : Mr.J.Sairam for R1 to R3
No Appearance for R4
in both CRPs

**COMMON ORDER**

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These Revisions have been preferred by the second defendant, aggrieved by the order passed by the Trial Court in I.A.Nos.546 & 547 of 2017 in O.S. No.178 of 2013 dated 21.02.2018 to re-open the case and also appointing an Advocate Commissioner as sought for by the respondents/plaintiffs.

2. I have heard Mr.L.Mouli, learned counsel for the revision petitioner in both CRPs and Mr.J.Sairam, learned counsel for the respondents 1 to 3 in both CRPs.

3. Mr.L.Mouli, learned counsel for the revision petitioner would submit that the Applications for re-opening and for appointing an Advocate Commissioner were filed belatedly, that too, after the suit was reserved for judgment after the parties had led oral and documentary evidence. According to the learned counsel for the petitioner, both the Applications have been filed with an intention to fill up the lacuna, especially, the suit being one for declaration and injunction. He would submit that the Trial Court ought not to have exercised its discretion in



permitting the said Applications taken out by the plaintiffs. He would therefore prayed for the present Civil Revision Petitions being allowed by setting aside the aforesaid Applications.

4. Per contra, Mr.J.Sairam the learned counsel for the respondents would submit that there is no illegal or perversity in the order passed by the Trial Court, especially when only after affording an opportunity to the petitioner, the Trial Court ordered the said Applications. He would therefore pray for dismissal of the Civil Revision Petitions.

5. I have carefully considered the submissions advanced by the learned counsel on either side and I have also perused the orders passed in I.A. Nos.546 & 547 of 2017 in O.S. No.178 of 2013 dated 21.02.2018.

6. This Court has found that valid reasons have been assigned for appointing the Advocate Commissioner to measure the property and identify the same with the help of the qualified surveyor and in view of the delay, the Trial Court has also imposed the costs of Rs.5,000/- to be paid to the second respondent.



7. I do not find any illegality in discretion exercised by the Trial Court since in order to do substantial justice, the Trial Court was justified in appointing an Advocate Commissioner to have all the facts before it in order to pronounce judgment. I do not see any reasons to interfere with the order passed by the Trial Court.

8. Accordingly, these Civil Revision Petitions are ***dismissed*** with a direction to the respondents/plaintiffs to pay a further cost of Rs.5,000/- (Rupees Five Thousand only) to the revision petitioner/second respondent within a period of two weeks from date of receipt of the copy of the order. They are also permitted to withdraw the sum of Rs.5,000/- already deposited before the Trial Court. Considering the fact that these revisions have been pending before this Court for the last six years, the Trial Court shall endeavor to dispose of the suit expeditiously at any date not later than four months from the date of receipt of the copy of the order. Consequently, connected Miscellaneous Petition is closed. No costs.

25.09.2024

Index: Yes/No

Speaking order/Non-speaking order

rkp



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- 1.The II Additional Sub Judge, Salem.
- 2.The Section Officer,
VR Section, Madras High Court, Chennai.



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P.B.BALAJI, J.

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