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C.R.P.No.2557 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.2557 of 2024
and C.M.P.No.13423 of 2024

1.Susai Muthu
2.Arul Mary

... Petitioners

-Vs-

1.Anthonysamy
2.Arokiyaraj

... Respondents

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the order dated 29.02.2024 made in IA No.2 of 2020 in O.S.No.101 of 2013 on the file of the Principal Munsif Court at Jayamkondam.

For Petitioner : Mr.K.P.P.Raja Raja Chozhan

ORDER

This civil revision petition is against the order passed by the learned Principal District Munsif at Jayamkondam in I.A.No.2 of 2020 in O.S.No.101 of 2013 dated 29.02.2024.

2. The application in I.A.No.2 of 2020 seeks for relief of summoning the advocate commissioner who had submitted a report in O.S.No.251 of 2008 to appear and depose evidence in the present suit in O.S.No.101 of 2013. In terms of



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Order XXVI Rule 10(2) of the Code of Civil Procedure, a party to the suit is entitled to summon an advocate commissioner to come and depose evidence on his report.

This is for an understanding that the report of the advocate commissioner which is received as evidence in the suit, if controverted in that suit, the commissioner would have to subject himself to cross examination to defend his report. The fact that the advocate commissioner is entitled to be cross examined for having submitted a report in one suit does not mean he has to appear in a subsequent suit for which he was never appointed.

3. The case of the defendant herein is that the advocate commissioner was appointed in O.S.No.251 of 2008 and has submitted a report and therefore that report may be received in the present suit. The report of the advocate commissioner is filed for the purpose of elucidation of facts to assist the Court to render a proper judgment in one suit. That cannot be used in a subsequent suit even if the suit property is one and the same.

4. In the present case, the suit property is not the same, but adjacent property. The proper relief for the petitioner would have been to move an application for appointment of an advocate commissioner and ask him to conduct an inspection and submit a report and thereafter if he is dissatisfied, to examine him in evidence. I do not find any error in the order of the learned Principal District Munsif, Jayamkondam, Ariyalur District in I.A.No.2 of 2020 dated 29.02.2024.



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5. The Civil revision petition is dismissed with liberty to the petitioner to move an application for appointment of an advocate commissioner. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

The Principal District Munsif
Jayamkondam, Ariyalur District.



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V. LAKSHMINARAYANAN, J.

KST

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