



C.R.P.(NPD).No.2476 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2476 of 2021

and

C.M.P.No.18718 of 2021

Krishamoorthy @ K.S Krishnan (Dead)

1.K.Samboornam

2.K.Parameswaran

3.T.Shanmugapriya

4.K.Duraisamy

... Petitioners

VS

K.S Subramaniam

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair order and decreetal order in I.A.No.1 of 2021 in A.S.No.37 of 2020 on the file of the Principal Subordinate Judge, Erode, passed on 21.09.2021 as illegal, incompetent and without jurisdiction.



WEB COPY



C.R.P.(NPD).No.2476 of 2021

For Petitioners : Mr.Avinash Wadwani
for M/s.V.Srimathi

For Respondent : Mr.G.Pavendhan

ORDER

The Civil Revision Petition is filed challenging the order passed by the First Appellate Court dismissing the application filed by the petitioners seeking appointment of Advocate Commissioner to note down the physical features in and around the suit property involved in the appeal.

2. The petitioners herein filed a suit for declaration of title and injunction. The respondent herein filed a suit for recovery of possession. Both the suits were tried together and the Trial Court dismissed both the suits. Aggrieved by the dismissal of the suit for declaration of title and injunction, the petitioners filed appeal in A.S.No.35 of 2020 and the respondent challenging the dismissal of his suit for recovery of possession, filed appeal in A.S.No.37 of 2020 and both are pending before the First Appellate Court.



C.R.P.(NPD).No.2476 of 2021

3. When the matter is posted for argument, the petitioners appeared to have filed the instant application seeking appointment of Advocate Commissioner to note down the physical features. The said application was dismissed by the First Appellate Court on the ground that already an Advocate Commissioner was appointed before the Trial Court in I.A.No.149 of 2011 and he filed his report and the petitioners also filed their objections on 05.11.2015.

4. In such case, it is for the petitioners to make their submissions based on their objection and there is no necessity for appointment of second Advocate Commissioner. Before the Trial Court, the petitioners have not taken any steps for reissue of warrant to the Advocate Commissioner. The appeal is of the year 2020. In such circumstances, in appellate stage, there is no necessity for appointment of Advocate Commissioner to note down the physical features. The petitioners are expected to advance their argument based on the objection raised by them to the Advocate Commissioner's report.



C.R.P.(NPD).No.2476 of 2021

5. With this clarification, the Civil Revision Petition stands dismissed.

No costs. Consequently, the connected civil miscellaneous petition is closed.

28.02.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



C.R.P.(NPD).No.2476 of 2021

To

WEB COURT
The Principal Subordinate Judge,
Erode.



WEB COPY



C.R.P.(NPD).No.2476 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.2476 of 2021

28.02.2024