



C.R.P.No.3176 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2024

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THE HON'BLE JUSTICE N.SATHISH KUMAR

C.R.P.(NPD) No.3176 of 2024

and

C.M.P.No.17007 of 2024

1. Varadharaja Pillai
2. Vaithiyalingam
3. Arunachalam

... Petitioners/Petitioners/Respondents

-vs-

Narayanan

... Respondent/Respondent/Appellant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order and the decree order dated 19.03.2024 made in I.A.No.1 of 2023 in A.S.No.15 of 2022 on the file of the learned Principal Sub-Ordinate Court Judge at Dharmapuri and allow the Civil Revision Petition.

For Petitioners : Mr.M.Rajasekhar
For Respondent : No Appearance

ORDER

A challenge has been made to the impugned order dated 19.03.2024 made in I.A.No.1 of 2023 in A.S.No.15 of 2022, by which an



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Advocate Commissioner was appointed to identify the possession of the revision petitioners over the suit property

2. A suit in O.S.No.225 of 2012 was originally filed by the plaintiff / respondent herein for declaration on the basis of an oral partition and the said suit came to be dismissed on 28.03.2022, against which an Appeal in A.S.No.15 of 2022 had been preferred by the respondent herein, who is none other than the son of the 1st revision petitioner and brother of revision petitioners 2 and 3.

3. The defendants / revision petitioners herein denied the oral partition before the Civil Court and after a full fledged trial, the suit came to be dismissed. Before the First Appellate Court, the respondent herein filed I.A.No.1 of 2023 for appointment of an Advocate Commissioner to note down the possession of the revision petitioners and the said Interlocutory Application was initially dismissed by the First Appellate Court on 20.04.2023 and the order had been challenged before this Court in C.R.P.No.4030 of 2023.



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4. According to the revision petitioners, in the said CRP, it was projected before this Court as if I.A.No.1 of 2023 was filed only for grant of interim injunction and not for appointment of Advocate Commissioner. Only in that context, this Court allowed the petition and set aside the findings made in I.A.No.1 of 2023 and directed the First Appellate Court to hear the application once again. Thereafter, the application for Advocate Commissioner was allowed by an order dated 19.03.2024 impugned herein.

5. Learned counsel for the revision petitioners submitted that on earlier occasion, the application was dismissed and now, the impugned order has been passed without any observation and without hearing other side.

6. I have perused the material documents available on record.

7. Admittedly, the relief sought in I.A.No.1 of 2023 was for appointment of an Advocate Commissioner and originally, the application was dismissed, holding that Advocate Commissioner cannot be appointed to gather evidence and prove the possession. In the CRP filed before this Court,



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the order passed in the Interlocutory Application was set aside on the ground of presumption that the application was filed for interim injunction and a direction was issued to the Trial Court to rehear the application and pass orders afresh.

8. It is seen that consequent to the order passed by this Court, the application was reheard and orders passed only with an intention to comply with the direction of this Court. The impugned order now passed is bereft of particulars and no opportunity of hearing whatsoever was given to the revision petitioners herein. As the suit was filed on the basis of the oral partition, this Court is of the view that the question of Advocate Commissioner ascertaining the actual possession of the property will not arise at all. Be that as it may, the impugned order has been passed without proper adjudication and the warrant has been straightaway issued and therefore, the order is liable to be set aside.

9. Accordingly, this Civil Revision Petition is allowed and the impugned order dated 19.03.2024 made in I.A.No.1 of 2023 in A.S.No.15 of 2022 by Principal Sub-Ordinate Court Judge, Dharmapuri is hereby



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quashed. The matter is remitted to the Trial Court with a direction to rehear the matter once again and pass an order thereon as expeditiously as possible, after affording an opportunity of hearing to the revision petitioners as well as upon considering the oral submissions, pleadings in the plaint and evidence already on record. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking Order/Non Speaking Order
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N.SATHISH KUMAR,J.,
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