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C.R.P.(PD)No.3317 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P. DHANABAL

C.R.P.(PD).No.3317 of 2022

and

C.M.P.No.17583 of 2022

1. Arunachalam @ Umesh

2. Prakash

3. Sakthivel

... Petitioners/Defendants

VS.

A.Madhan Prakash

... Respondent/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Final order dated 12.08.2022 in I.A.No.4 of 2022 in O.S.No.788 of 2015 on the file of the I Additional District Munsif Court, Salem.

For Petitioners : Mr. R. Nalliyappan

For Respondent : No appearance



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ORDER

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This Civil Revision Petition has been filed by the petitioners, challenging the order, dated 12.08.2022 passed in I.A.No.4 of 2022 in O.S.No.788 of 2015, by the I Additional District Munsif Court, Salem, wherein, the petitioners' herein have filed a petition before the Trial Court, to issue summon to examine the VAO and Surveyor, who were accompanied with the Advocate Commissioner to measure the suit property, at the time of inspection of the Advocate Commissioner and the Trial Court has dismissed the petition.

2. Aggrieved by the said order, the present Civil Revision Petition has been filed.

3. According to the petitioners, they are the defendants in the main suit. The plaintiffs have filed the suit for permanent injunction. While pending the suit, the respondent/plaintiff has filed a petition for appointment of Advocate Commissioner and at that time, the VAO and the Surveyor have also present and measured the suit property. The Surveyor and the VAO have assisted the Advocate Commissioner in identifying and measuring the property. Thereafter, the Advocate Commissioner has filed his report. Now, the said VAO and the



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Surveyor, who accompanied with the Advocate Commissioner are to be examined on the side of the defendants and thereby, they filed the petition. But the Trial Court, without considering the nature of the suit and without giving opportunity to the petitioners to put forth their defence in the main suit, dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

4. According to the respondent, already the Advocate Commissioner was appointed and filed his report and that the petitioners have not filed any objections for the Advocate Commissioner's report and that there is no reason assigned by the petitioners to examine the above said witnesses. The Advocate Commissioner was also examined as witness and the petitioners also cross examined the Advocate Commissioner, elaborately, hence, the present petition is filed, only to delay the proceedings. The Trial Court also after elaborately discussed and correctly dismissed the petition. Therefore, the present petition is liable to be dismissed.

5. The learned counsel appearing for the petitioners would contend that



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the petitioners have filed a petition to examine the VAO and the Surveyor, who accompanied with the Advocate Commissioner, at the time of inspecting the property. The Advocate Commissioner also inspected the property, based on the records produced by the VAO and the Surveyor. Therefore, the evidence of VAO and the Surveyor are very essential to decide the case. But, the Trial Court failed to consider the same and dismissed the petition and thereby, the order of the Trial Court is liable to be set aside.

6. The learned counsel appearing for the respondent would contend that already the Advocate Commissioner was appointed and the Advocate Commissioner also inspected the property with the help of the Surveyor and the VAO and also he filed elaborate report along with documents. The Advocate Commissioner was examined as witness and the said Advocate Commissioner was elaborately cross examined by the petitioners side. The petitioners' have not stated any reason to examine the above said witness. Therefore, the Trial Court correctly dismissed the petition. Now, the present petition is liable to be dismissed.

7. This Court heard both sides and perused the records.



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8. It is the admitted fact, that already the Advocate Commissioner was appointed and he also inspected and filed a report. At the time of inspection, the VAO and the Surveyor have assisted the Advocate Commissioner and the Advocate Commissioner has also filed his elaborate report. The said Advocate Commissioner was also examined as witness in the main suit and the petitioners' have also cross examined the Advocate Commissioner. According to the petitioners, the VAO and the Surveyor, who assisted the Advocate Commissioner have to be examined as witnesses.

9. On perusal of records, it seen that the petitioners have not stated any reasons in the affidavit to examine the said witnesses. In what way, their evidences are essential to decide the case has to be explained by the petitioners and this Court has to satisfy whether their evidences are relevant to decide the case or not.

11. In this case, the petitioners have not stated any reason, as to why, they have to be examined as witnesses. Therefore, the Trial Court after taking into consideration of the entire materials, correctly dismissed the petition.



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Thereby, this Court has no warrant to interfere with the order of the Trial Court.

12. In view of the above said discussion, this Court is of the opinion, that this petition has no merits and the same is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed. The order dated 12.08.2022 passed in I.A.No.4 of 2022 in O.S.No.788 of 2015, by the I Additional District Munsif Court, Salem, is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

26.06.2024

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Index :Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To:



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1.The I Additional District Munsif Judge,
Salem.

2.The Section Officer,
V.R.Section,
High Court of Madras.

P. DHANABAL, J.



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