



C.R.P.No.4169 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.4169 of 2024
and CM.P.No.22982 of 2024

1. R.Desamuthu

2. Baby

3. R.Shanthi

4. R.Selvi

5. R.Babu

... Petitioners

Vs

1. Devika

2. Chandrika

... Respondents

PRAYER : Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, pleaded to set aside the order dated 05.08.2024 in I.A.No.2 of 2024 in A.S.No.114 of 2024 on the file of the XIXth Additional City Civil Court, Chennai.

For Petitioners : Mr.G.Chandrasekaran



C.R.P.No.4169 of 2024

ORDER

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The Civil Revision Petition has been filed against the order passed by the XIX Additional City Civil Court, Chennai, in I.A.No.2 of 2024 in A.S.No.114 of 2024 on 05.08.2024.

2. The brief facts of the case is that the petitioners are the plaintiffs and the respondents are the defendants in O.S.No.1755 of 2018. The suit was filed by the plaintiffs/petitioners before the learned III Assistant Judge, City Civil Court, Chennai, seeking for a relief of permanent injunction restraining the defendants or their men in any manner from interfering with the plaintiffs' peaceful possession and enjoyment of the suit schedule property. The said suit was dismissed by the learned trial Judge vide judgment dated 30.01.2024. Aggrieved against the same, the petitioners/plaintiffs have preferred an appeal in A.S.No.114 of 2024 before the XIXth Additional City Civil Court, Chennai. Pending appeal, the petitioners have filed an application in I.A.No.2 of 2024 seeking to appoint an Advocate Commissions to ascertain the measurement and possession of the petitioners in the suit property. The learned XIX Additional Judge, after hearing both sides, dismissed the application vide order dated 05.08.2024. Challenging the same, the present Civil Revision Petition has been filed.



C.R.P.No.4169 of 2024

3. Learned counsel for the petitioners submitted that despite the power available under Section 107(2) of CPC, the lower appellate Court had erred in not appointing an Advocate Commissioner. He further submitted that the first appellate Court ought to have concluded that the Commission Report is to assist the Court proceedings and not bring the additional evidence, thereby, he prayed to set aside the impugned order dated 05.08.2024 rejecting the petition seeking for appointment of an Advocate Commissioner.

4. Heard the learned counsel for the petitioners and perused the materials available on record.

5. It is seen that the petitioners are the plaintiffs, who had filed the suit in O.S.No.1755 of 2018 before the III Assistant City Civil Court, Chennai, seeking for a permanent injunction in respect of the suit property. The trial Court had dismissed the suit on 30.01.2024, against which, the petitioners/plaintiffs have filed an appeal in A.S.No.114 of 2024. Pending appeal, an application in I.A.No.2 of 2024 filed by the petitioners was dismissed by the first appellate Court. Aggrieved over the same, the present revision petition has been filed.



C.R.P.No.4169 of 2024

6. It is the case of the petitioners that the petitioners have been residing in the suit property for generation and that the Government had issued Ryotwari Patta in the name of their father Rajaram in the year 1998 mentioning the extent as 0.03 cents. Subsequently, two land ownership details extract from the Town Survey Land Register, in respect of R.S.No.15 and R.S.No.17 were issued through online in the name of their father for a total extent 1 ares 36.6 square meter and 0 ares, 55.0 Sq.m comprised in land area 2059 Sq.ft. Only after filing of the suit, the petitioners came to know that the respondents' grand father's name is Sadaiyappan and father's name is Shanmugam and as per Ryotwari patta No.782, S.No.183/51 and total extent of land available to the respondents is 1 cent as it was reflected in the 'A' Register filed by the respondents and the land was located in the North East side of the suit schedule property.

7. It is the further case of the petitioners that the respondents had suppressed the fact and wrongly stated in their written statement that the property in Survey no.183/47 belongs to their father Shanmugam and that the total extent was 4 cents. However, the trial Court, after a full fledged trial, had categorically concluded that the petitioners have not filed any documents to prove their ownership of the land



C.R.P.No.4169 of 2024

measuring about 599 Sq.ft and dismissed the suit. Aggrieved over the same, the petitioners have filed an appeal and pending appeal, the respondents, taking advantage of the decree in the suit, had attempted to trespass into the suit property, thereby, the petitioner had filed an application seeking appointment of an Advocate Commissioner at the appellate stage to ascertain the measurements of possession and enjoyment of the petitioners and the respondents. The respondent has filed a counter contending that in the plaint, the petitioners had categorically admitted that they are owners of the property measuring 1469 Sq.ft alone, however, later they had included the adjoining land owned by the respondents to an extent of 599 Sq.ft.

8. The first Appellate Court, contending that the petitioners, who ought to have sought for appointment of Advocate Commissioner before the trial Court, having failed to do so, are not entitled to file an application pending the appeal. Further, the first appellate Court, holding that the Advocate Commissioner cannot be appointed for collection of evidence and the petitioners cannot be permitted to prove their possession of the suit property by creating evidence through Advocate Commissioner and also holding that the petitioners having failed to file commission



C.R.P.No.4169 of 2024

petition before the trial Court, are not entitled to file the petition, had dismissed the same.

9. Having gone through the records, this Court does not find any illegality or infirmity in the order passed by the XIX Additional City Civil Court, Chennai. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs. However, it is made clear that the observations made by this Court in this Civil Revision Petition are only for the purpose of disposing the same and the same shall not have any bearing in the appeal in A.S.No.114 of 2024 pending between the parties before the XIX Additional City Civil Court, Chennai.

17.10.2024

Index : Yes / No
Neutral Citation : Yes / No
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To

The XIX Additional City Civil Court, Chennai.

A.D.JAGADISH CHANDIRA, J.

6 / 7



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C.R.P.No.4169 of 2024

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17.10.2024

7 / 7