



C.R.P. (MD) No. 1424 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2024

CORAM

THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P. (MD) No. 1424 of 2024

and

C.M.P. (MD) No.8452 of 2024

1.S.Gomathi Ammal

2.Muthumariappan

... Petitioners/

Petitioners

-VS-

Selvam

... Respondent/

Respondent

PRAYER: Civil Revision Petition filed under Article 225 of the Constitution of India, to set aside the fair and ex-order order dated 01.03.2024 in I.A.No.1 of 2023 in A.S.No.82 of 2018, on the file of the Subordinate Court, Thoothukudi.

For Petitioners : Ms.K.Hemakarthikeyan

ORDER

The Civil Revision petition is filed against the order dated 01.03.2024 in I.A.No.1 of 2023 in A.S.No.82 of 2018. By the said interlocutory application, the petitioner herein has prayed for the relief to cancel the Commissioner's report marked as Ex.C1 and C2 before the lower court and to reissue the



C.R.P. (MD) No. 1424 of 2024

warrant to the same Commissioner to inspect the second schedule property along with the help of the surveyor and directing him to file a report. The said the interlocutory application was rejected by the appellate court on the ground that at the appellate stage the same cannot be done.

2. Heard, Ms.K.Hemakarhikeyan, the learned counsel appearing on behalf of the petitioner. The learned Counsel would submit that the Advocate Commissioner conducted the survey on his own without the assistance of the jurisdictional surveyor. Though, both sides learned Counsel had instructed the Commissioner not to have the assistance of the surveyor, now at the appellate stage, once it is felt that something seriously is wanting in respect of the Advocate Commissioner's report, there is no prejudice in ordering further enquiry and the appellate court ought to have interfered in the matter.

3. I have considered the said submissions made on behalf of the Counsel for the petitioner and perused the material records of the case.

4. It can be seen that when the direction was issued by the Trial Court, when the Advocate Commissioner visited the suit premises for conducting local enquiry, both sides learned counsel jointly insisted that the Advocate



C.R.P. (MD) No. 1424 of 2024

Commissioner need not take the help of the surveyor and gave him written instructions to go ahead with the local enquiry on his own. Based on the same, the Advocate Commissioner measured and noted down the features and filed the report. Even before the trial Court, there was no objection was filed as against the report of the Advocate Commissioner. Therefore, now at the appellate stage, without even filing any objection as to the correctness or otherwise of the report, the further enquiry cannot be pleaded by the petitioners merely because they lost the suit. However, it would be open for them to argue before the lower appellate Court to not to give weightage to the Advocate Commissioner as may be permissible under law.

5. In view thereof, finding no merits, this Civil Revision Petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed. No cost.

04.07.2024

Index : Yes
NCC : No

PKN



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C.R.P. (MD) No. 1424 of 2024

D.BHARATHA CHAKRAVARTHY, J.

PKN

To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

C.R.P. (MD) No. 1424 of 2024

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