



C.R.P(MD)No.1673 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29.07.2024

CORAM

THE HONOURABLE MR JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P(MD)No.1673 of 2024

and

C.M.P(MD).No.9791 of 2024

Jeyakumar

... Petitioner

Vs.

1.Vasanth

2.Dhansekar

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records pertaining to the fair and decreetal order dated 12.02.2024 passed in I.A.No.5 of 2023 in A.S.No.11 of 2022 on the file of the I Additional Subordinate Court, Nagercoil and set aside the same as illegal.

For Petitioners

: Mr.S.Ayyanar Prem Kumar

ORDER

The civil revision petition is filed aggrieved by the fair and decreetal order dated 12.02.2024 made in I.A.No.5 of 2023 in A.S.No.11 of 2022 on the file of the I Additional Subordinate Court, Nagercoil.



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2. The said Interlocutory Application is filed pending the appeal suit with a request to appoint an Advocate Commissioner. The First Appellate Court found that when there is a Commissioner report, which is there on record during the trial, a second Commissioner cannot be appointed.

3. The learned counsel submitted that the earlier report of the Advocate Commissioner is erroneous in law, which resulted in grave prejudice to the petitioner /appellant. The petitioner /appellant would loose their valuable rights in respect of the properties, unless or otherwise one opportunity is granted to him to establish otherwise that the Commissioner report was erroneous. It is the second contention of the learned counsel for the petitioner that there is likelihood of a settlement also as the litigation is between relatives.

4. I have considered the said submission made by the learned counsel for the petitioner and perused the material records of the case.

5. When there is an Advocate Commissioner report, which is on record, unless the said report is impugned and scrapped, a second Commissioner cannot be appointed. Even if it is the case of the petitioner that the Advocate



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Commissioner report is erroneous or that the trial Court gave undue weightage to an erroneous report, the same shall be argued only during the appeal and without even giving any finding as to the earlier Commissioner's report, the second Commissioner cannot be appointed. As far as the contention that there is likelihood of settlement is concerned, the same prayer can very well be made before the First Appellate Court and the First Appellate Court can consider referring the parties to the mediation centre attached to the concerned Court itself.

6. With the above observations, the Civil Revision Petition is disposed of.
No cost. Consequently, connected Miscellaneous Petition is closed.

29.07.2024

NCC:Yes/No
Index:Yes/No
Rmk

To

1. I Additional Subordinate Court, Nagercoil.



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D.BHARATHA CHAKRAVARTHY, J.

Rmk

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