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CRP(PD).No.2741 of 2024,



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

CRP.(PD).No.2741 of 2024
and
CMP.Nos.14535 of 2024

1.Selvambal

2.Jayanthi

3.Saravanan

... Petitioners

Vs.

1.Karuppasamy Gounder

2.Venkatesan Gounder

3.Kaveri

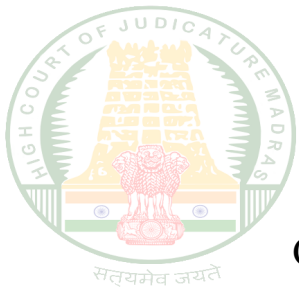
4.Anjalai

... Respondents

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 08.01.2024 passed in IA.No.250/2023 in OS.No.246/2012 on the file of the II Additional District Munsif Court, Virudhachalam.

For Petitioner

: M/s.T.Sezhian



ORDER

Challenging the rejection of their application to scrap the report and plan filed by the Advocate Commissioner and to appoint a new Advocate Commissioner to measure the suit property with the assistance of a surveyor and note down the encroachment made by the respondents/defendants, the plaintiffs are the petitioners before this Court.

2. The facts are briefly set out herein below.

3. The petitioners/plaintiffs had filed a suit in OS.No.246/2012 for declaration and recovery of possession in respect of the suit schedule property. The respondents/defendants have also filed a suit in OS.No.17 of 2013 for declaration, recovery possession and mandatory injunction in respect of the suit property. The two suits are being tried together.

4. While so, in the suit OS.No. 246 of 2012, an Advocate Commissioner had been appointed as per the order passed in IA No.264 of 2012 and the Commissioner had also visited the suit property and submitted a report. This report is sought to be scraped by



the petitioners/plaintiffs on the ground that the Advocate Commissioner's report and plan will not be useful for arriving at a decision in the suit filed by the petitioners/plaintiffs and the suit filed by the respondents/defendants and this has come to light by cross examining the Advocate Commissioner. On this ground, the impugned application (IA.No.250/2023) has been filed to scrap the report and plan filed by the Advocate Commissioner and to appoint a new Advocate Commissioner to measure the suit property with the assistance of a surveyor and note down the encroachment made by the respondents/defendants.

5. The 1st respondent/ 1st defendants had filed a counter inter alia denying the allegations made by the petitioners/plaintiffs. The 1st respondent/1st defendant would submit that the Advocate Commissioner had visited the property twice and there are two reports available. He would therefore submit that this application is filed only to prolong and protract the proceedings.

6. The learned II Additional District Munsif, Vridhachalam after



hearing the parties and perusing the records dismissed the said application. Challenging the same the petitioners are before this court.

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7. Heard the counsel for the petitioners and perused the records.

8. A perusal of the affidavit filed in support of the impugned application does not clearly state as to why there is a necessity to scrap the earlier reports of the Advocate Commissioner. Except for stating that it is not helpful for either of the parties, there is no other reason given to show as to how the reports are lacking. The Trial Court had issued warrants to the Advocate Commissioner twice and the 2nd report had been filed on 25.10.2018 itself. The present application has been filed nearly 5 years after the 2nd report has been taken on file.

9. From a perusal of the impugned order, it is also seen that the parties have not participated in the 2nd inspection carried out by the Advocate Commissioner and without even participating in the inspection, the petitioners/plaintiffs have come forward to scrap the report filed by the Advocate Commissioner that too after a lapse of nearly 5 years. In these circumstances, the II Additional District



CRP(PD).No.2741 of 2024,

Munsif Virudhachalam has rightly dismissed the application and I see no reason to interfere with the same.

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10. Accordingly, the Civil Revision Petition stands dismissed.

No costs. Consequently, the connected Miscellaneous Petition is closed.

24.04.2025

(shr)

Index : Yes/No

Speaking Order: Yes/No

Neutral Citation : Yes/No

To

1.The II Additional District Munsif Court, Virudhachalam.

P.T. ASHA. J.,

(shr)



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