



C.R.P.No.1764 of 2025

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2025

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P.No.1764 of 2025
and C.M.P.No.10170 of 2025

Kaliappan

... Petitioner

Vs

1. Kalyani

2. Pappathi

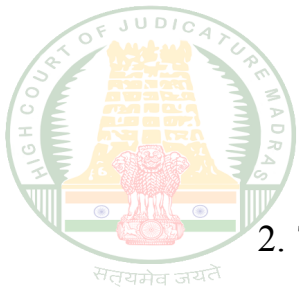
... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, pleased to set aside the order and decree passed in I.A.No.2 of 2024 in A.S.No.29 of 2019 on the file of the Sub Court, Udumalpet, dated 21.10.2024.

For Petitioner : Mr.S.Prabhu

ORDER

This Civil Revision Petition has been filed against the order passed by the learned Sub Judge, Udumalpet, in I.A.No.2 of 2024 in A.S.No.29 of 2019 on 21.10.2024.



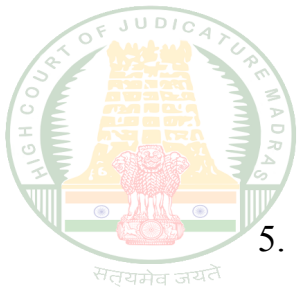
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2. The brief facts of the case are that the petitioner is the third defendant in the suit filed by the first respondent/plaintiff in O.S.No.579 of 2009 before the District Munsif Court, Udumalpet, seeking for partition and the same was decreed on 02.08.2019. Against which, the petitioner/3rd defendant had preferred an appeal in A.S.No.29 of 2019 before the Sub Court, Udumalpet. In which, the petitioner had filed an application in I.A.No2 of 2024 seeking to appoint an Advocate Commissioner, whereas, the appellate Court has dismissed the same on 21.10.2024. Challenging the same, the present Civil Revision Petition has been filed.

3. Learned counsel appearing for the petitioner submitted that the appointment of an Advocate Commissioner is necessary for deciding the appeal suit, whereas, the appellate Court, without taking into consideration the necessity, had dismissed the application. Hence, he prayed to set aside the dismissal order passed by the appellate Court in I.A.No.2 of 2024 on 21.10.2024.

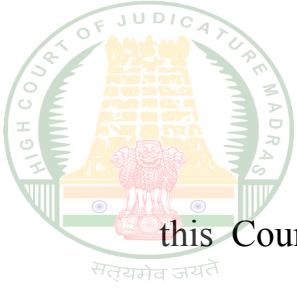
4. Heard the learned counsel appearing for the petitioner and perused the materials available on record.



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5. On perusal of the record, this Court finds that the preliminary decree in the suit filed by the plaintiff was passed on 02.08.2019 and the appeal suit was filed in the year 2019 by the petitioner, however, only after a period of five years, the petitioner had filed an application in I.A.No.2 of 2024 in A.S.No.29 of 2019 seeking to appoint an Advocate Commissioner to inspect the suit schedule property and to file a report and sketch. The appellate Court, finding that the suit was filed for partition and that how far the appointment of an Advocate Commissioner would be of benefit for deciding the appeal suit and also finding that despite sufficient opportunity, the petition was not filed before the trial Court in O.S.No.579 of 2009 and also that the application has been filed under Order 26 Rule 9 of CPC, at the fag end of the appeal, had dismissed the application holding that the application was filed only to drag the proceedings.

6. In view of the above, this Court is of the opinion that the petitioner had failed to file the application during the pendency of O.S.No.579 of 2009 and that only after five years, when the appeal suit is at the final stage, the petitioner had come up with the application to appoint the appointment of an Advocate Commissioner and the appellate Court had rightly dismissed the application and



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this Court does not find any illegality or infirmity in the order passed by the

learned Sub Judge, Udumalpet.

7. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

25.04.2025

Note : Registry is directed to return the original papers to the counsel for the petitioner.

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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To

1. The Sub Court,
Udumalpet.
2. The Section Officer,
VR Section, High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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