



CRP NO.2768 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON : 26 / 11 / 2024

ORDER PRONOUNCED ON : 10 / 03 / 2025

CORAM:

THE HONOURABLE MR. JUSTICE R. SAKTHIVEL

CRP NO.2768 OF 2023
AND CMP NO.17109 OF 2023

1.Velusamy

S/o. Raju Naidu
No.26A, Raju Garden, Vasantha Road,
Sujini Mills Opp, Ramanathapuram,
Coimbatore District.

2.Nagarathinam

W/o.Thiru R.Ramakrishnan
Old No.17, New No.30, New Damu Nagar,
Puliakulam, Coimbatore District.

3.Kanagarathinam

W/o. Late P.S.Velumani
No.24A, Raju Gardens, Vasantha Road,
Coimbatore District.

4.Jothimani

W/o. Thiru Sampathkumar, N
No.5/24B, Raju Garden, Sowripalayam,
Coimbatore

... Petitioners /
Petitioners /
Defendants 2 to 5

Versus



CRP NO.2768 OF 2023

Harini Venkataraman
D/o. G.Venkataraman
27-D, Vasantha Nagar,
Sowripalayam, Coimbatore District.

... Respondent /
Respondent /
Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated March 23, 2023 passed in I.A.No.5 of 2023 in O.S.No.737 of 2013 on the file of the Court of II Additional Subordinate Judge, Coimbatore.

For Petitioners : Mr.M.Sriram
For Respondent : Mr.K.Venkatasuban
for M/s.Sarvabhauman Associates

ORDER

This Civil Revision Petition is directed against the order dated 23.03.2023, passed in I.A.No.5 of 2023 in O.S.No.737 of 2013 by the II Additional Subordinate Judge, Coimbatore.

2. The petitioners herein are the Defendant Nos.2 to 5 in the Original Suit. The respondent herein is the plaintiff therein. First defendant therein, who is none other than the mother of petitioners herein, passed away pending Suit. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Suit.



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3. The plaint consists of Schedule A property which is the plaintiff's property, and Schedule B property which forms a part of defendants' property. The plaintiff allegedly has right of easement by necessity over Schedule B property. The plaintiff filed the Suit for mandatory injunction to remove the compound wall put up by the defendants on the southern side of the plaint 'B' Schedule property blocking access to the plaintiff's plaint 'A' Schedule property as well as for permanent injunction against the defendants. Along with the plaint, the plaintiff filed an application under Order 26 Rule 9 of the Code of Civil Procedure, 1908 ['CPC' for short] in I.A.No.279 of 2013 seeking appointment of Advocate Commissioner to note down the physical features with the assistance of the Taluk Surveyor. The said application was ordered on April 30, 2013. The Advocate Commissioner after consulting the surveyor fixed the date of inspection as 03.10.2013 and informed the same to both parties. The defendants' counsel requested to postpone the inspection since he was unable to contact the parties and give instructions. The Advocate Commissioner denied the request and the same was intimated to the defendants' counsel. Then he proceeded to inspect on the date already fixed for inspection. Accordingly, inspection



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was carried out on 03.10.2013 along with Surveyor and his Report and Plan were submitted before the Court. At the time of inspection, it has been noted by the Advocate Commissioner that second defendant - Velusamy was present on behalf of the defendants. Thereafter, the defendants 2 to 5 filed I.A.No.810 of 2015 in I.A.No.279 of 2013 under Section 151 of CPC praying to recall the warrant issued to the Advocate Commissioner in I.A.No.27 of 2013 and order him not to visit the Suit Property and had he already visited, order him to defer filing of any report or plan. After hearing both sides, the said petition was dismissed by observing that I.A.No.810 of 2015 was numbered on 22.09.2015 *i.e.*, only after filing of the Report and Plan of the Advocate Commissioner on 26.03.2015 and by further observing that if really the defendants are aggrieved, they would have filed their objection for the Report and Plan; but they have not done so.

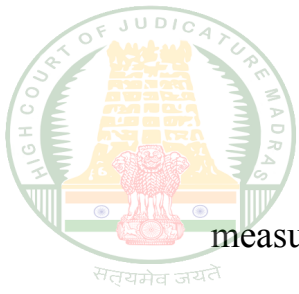
4. Thereafter, on 12.01.2023, the defendants 2 to 5 filed Interlocutory Application in I.A.No.5 of 2023 under Order 26 Rule 9 of CPC seeking appointment of Advocate Commissioner to note down physical features, more particularly lie and location and access from Vasantha Nagar Main Road across the property belonging to the



plaintiff's family, as well as to note down other features. The same was dismissed after hearing both sides by observing that the said Interlocutory Application was filed after 8 years from the date of Report of the Advocate Commissioner, and noting down physical features now would not help and by further observing that the conduct of the defendants would show their intention to drag on the proceedings.

5. Assailing the said Order, the defendants 2 to 5 have come up with this Civil Revision Petition.

6. Learned Counsel for the revision petitioners / defendants 2 to 5 would argue that the first defendant died and amendment was carried out vide Order dated 24.08.2021 made in I.A.No.1 of 2021 and the plaint was amended thereafter. Since amendment petition was pending, I.A.No.5 of 2023 was filed about 8 years later in 2023. Further the earlier Report and Plan of the Advocate Commissioner are *ex-parte* ones, and the Advocate Commissioner without adhering to the principles of natural justice fully, gave notice two days prior to the date of inspection and planned inspection in a hasty manner. Further, the plaint plan and the surveyor's plan looks like an exact replica. The Surveyor has failed to



measure the east-west length of the Suit 'B' Schedule property. Further, the Advocate Commissioner failed to note the alternate pathway to the plaintiff's property from Vasantha Nagar Main Road. Hence, the appointment of a new Advocate Commissioner to inspect and show that the Suit 'A' Schedule property has direct access from Vasantha Nagar Main Road is necessary. Learned Trial Judge failed to consider the said facts and erroneously dismissed the I.A.No.5 of 2023. Accordingly, he would pray to allow the Civil Revision Petition.

7. Per contra, learned counsel appearing for the plaintiff would argue that the defendants 2 to 5 did not file any objection for the earlier Advocate Commissioner Report and Plan. The earlier attempt to nullify the Advocate Commissioner's Report and Plan was dismissed on merits. This petition is not maintainable without scraping or setting aside the earlier Advocate Commissioner's Report and Plan. The Suit was filed in 2013 and inspecting the Suit Property now *i.e.*, more than 10 years later, would serve no purpose. Accordingly, he would pray to dismiss the Civil Revision Petition.



8. Heard on either side. Perused the materials available on record.

9. The plaintiff filed I.A.No.279 of 2013 in the month of April 2013 seeking appointment of Advocate Commissioner. After considering the facts and circumstances, the same was allowed. The Advocate Commissioner inspected the Suit Property on 03.10.2013 after due notice. The said Interlocutory Application was pending for about 6 months and the appointment of Advocate Commissioner was not a sudden one. It was not a surprise to the defendants. Moreover, the second defendant participated in the inspection and the same has been noted by the Advocate Commissioner in his Report. No objection has been filed against the Advocate Commissioner's Report and Plan by the defendants. In these circumstances, the contention that notice of date of inspection was provided only two days before does not hold water. Further the defendants if really wanted the Advocate Commissioner to inspect the Suit Property once again, they ought to have made request to the Advocate Commissioner or to the Court to reissue the same Advocate Commissioner. No such steps were taken by them. On the other hand, they filed I.A.No.810 of 2015 to recall the warrant issued to the Advocate



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Commissioner in I.A.No.279 of 2013 and order the Advocate

Commissioner not to visit the property, and had he inspected already not to file any Report or Plan. The same was dismissed. Reason for the delay assigned by the defendants 2 to 5 is that their mother / first defendant passed away pending Suit. First defendant's legal heirs / legal representatives viz., defendants 2 to 5 are already on record, and the factum of death was carried out by way of amendment on 24.08.2021. The same cannot be cited as a reason for the delay of almost 8 years in filing I.A.No.5 of 2023. Moreover, without scrapping the earlier Advocate Commissioner's Report and Plan and without assigning any reason, seeking fresh appointment of Advocate Commissioner is not maintainable. Moreover, according to the plaintiff, originally the Suit Property and some more extent of properties belonged to the brothers - Rangasamy Naidu and Raju Naidu, and partition took place between them whereby Suit 'A' Schedule property was allotted to Rangasamy Naidu from whom she purchased the same. Her case is that the Suit 'B' Schedule property is the only way to access Suit 'A' Schedule property. Though it is alleged that the adjacent properties belong to the plaintiff's family, whether easement by necessity would extinguish or not is a matter for



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trial. Fresh appointment of Advocate Commissioner will not help to decide the case. Moreover, the Suit was filed in 2013 and it is pending for more than 12 years. The conduct of the defendants would show their intention to drag on the case proceedings. The learned Trial Judge after considering the entire facts and circumstances, has rightly dismissed the Interlocutory Application. This Court does not find any irregularity or illegality in the said Order. Accordingly, the Civil Revision Petition deserves to be dismissed.

10. Resultantly, the Civil Revision Petition is dismissed. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

10 / 03 / 2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The II Additional Subordinate Judge
Coimbatore.



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R. SAKTHIVEL, J.
TK

PRE-DELIVERY ORDER MADE IN

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