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C.R.P.No.1109 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.03.2025

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.No. 1109 of 2025

&

C.M.P.No. 6561 of 2025

1.Ramasamy

2.Parvathi

3.R.Saravanan

4.Maheshwari

...Petitioners

Vs.

T.M.Subramaniam

...Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 19.09.2024 in IA.No.1 of 2023 in AS.NO.10 of 2023 on the file of the Sub Court, Udumalpet.



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For Petitioner : Mr. D.Krishna Pradeep

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ORDER

The petitioners are the appellants before the Sub Court, Udumalpet in AS.No.10 of 2023. They have filed the above revision challenging the order dismissing their application in IA.No.1 of 2023 seeking appointment of an Advocate Commissioner to note down physical features and measure the petition mentioned property along with surveyor. The short facts are herein below narrated.

2. The plaintiff / respondent herein filed the suit OS.NO.415 of 2013 on the file of the District Munsif, Udumalpet, for an injunction restraining defendants from interfering into the B schedule property and disturbing the peaceful possession and enjoyment of the B schedule property by the plaintiff. It appears that the suit was decreed as prayed for by Judgement and Decree dated 12.06.2023.



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3. Challenging the said Judgement the defendants who are the revision petitioners have filed AS.No.10 of 2023 on the file of the Sub Court, Udumalpet. In the said appeal they have filed an application in IA.No.1 of 2023 for appointment of an advocate commissioner to measure the properties and note down its physical features.

4. In the affidavit filed in support of the said petition, the 1st petitioner would submit that he had purchased the property from one Devasenathipathy consisting of the house and vacant site and a vacant site from one Arusamy, from out of which a portion has been settled on the 3rd defendant. The plaintiff during cross examination has admitted that he has not taken any steps to measure the suit pathway and he has not taken any steps to appoint an Advocate Commissioner. Therefore, the petitioners would submit that there is a necessity to appoint an Advocate Commissioner.



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5. The application was resisted by the plaintiff who would submit that the same petition had been taken out by the petitioners in IA.No.225 of 2022 before the Trial Court in the suit. This petition was dismissed against which no appeal or revision was filed.

6. The learned Judge taking into consideration the pleadings and the documents dismissed the application by stating that there is no appeal challenging the dismissal of the earlier application for appointing an Advocate Commissioner.

7. Challenging the same, the petitioners are before this Court.

8. Admittedly, the petitioners have filed IA.No.225 of 2022 before the Trial Court seeking the very same relief. By order dated 25.08.2022 the said application was dismissed holding that the petition was only sought for collecting evidence and the application has been filed after the evidence had been concluded on the defendant's side.



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The learned Trial Judge had observed that since evidence has been let in on both sides there was no necessity for the Advocate Commissioner to visit and give a report. Having suffered dismissal in the Trial Court for the very same relief, the petitioners have not set out any changed circumstances seeking appointment of an Advocate Commissioner before the Appellate Court.

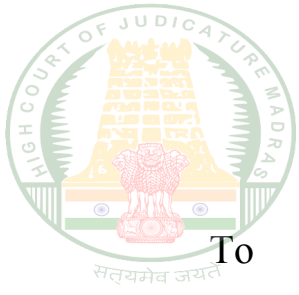
9. The learned Sub Judge, Udumalpet, has rightly dismissed the application and I see no reason to interfere with the said order. The Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

19.03.2025

Index : Yes/No

Internet : Yes/No

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To

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The Sub Court,
Udumalpet.

P.T. ASHA, J,



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