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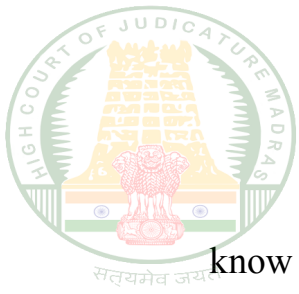
CRP.No.291 of 2023

CRP.No.291 of 2023
and
CMP.No.2388 of 2023

SATHI KUMAR SUKUMARA KURUP, J.

The Learned Counsel for the Petitioners submitted that he had filed this Revision Petition, aggrieved by the order of disposal of the IA.No.20374 of 2010 in IA.No.16869 of 2010 in O.S.No.10391 of 2010 on the file of the Learned V Assistant Judge, City Civil Court, Chennai.

2. It is the contention of the Learned Counsel for the Petitioners that the Respondents herein had filed O.S.No.10391 of 2010 with false averments. The Petitioners herein already filed another suit in O.S.No.8989 of 2008 pending on the file of the Learned X Assistant Judge, City Civil Court, Chennai, wherein EP is also filed against the vendor of the Respondents herein. Suppressing those facts the Respondents herein had filed O.S.No.10391 of 2010. On receipt of summons, the Petitioners herein had engaged a Counsel and on verification with the Court records before the V Assistant Judge, City Civil Court, Chennai, the Petitioners herein came to



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know about the appointment of an Advocate Commissioner at the initial stage in I.A.No.16869 of 2010 in O.S.No.10391 of 2010. Therefore, the Petitioners herein as Defendants in O.S.No.10391 of 2010 had filed Interlocutory Application under Order VII Rule 11 of CPC. After due enquiry, that petition was dismissed, as against which, he had had filed Civil Revision Petition and the same was disposed of with directions to the parties in the suit to file an appropriate application to amend the schedule of property by deleting the certificate No.223. Subsequently, he had filed a petition under Section 151 of CPC, seeking to set aside the order of appointing an Advocate Commissioner. The Learned Judge after due enquiry had dismissed the IA.No.20374 of 2010, vide order dated 30.08.2022. Aggrieved by the same, the Petitioners/Defendants in O.S.No.10391 of 2010 now the Petitioners in IA.No.20374 of 2010 had approached this Court seeking to set aside the order passed by the Learned V Assistant Judge, City Civil Court, Chennai. This petition filed under Article 227 of the Constitution of India.

3. It is the submission of the Learned Counsel for the



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Petitioners that I.A.No.20374 of 2010 had been dismissed by the Learned V Assistant Judge, City Civil Court, Chennai, stating that the petition under Section 151 of CPC, is not maintainable as the Petitioner has to seek remedy by way of an Appeal. It is the further contention of the Learned Counsel for the Petitioner that for orders under Order 26 Rule 9 CPC, there cannot be an appeal as per the proviso of CPC. Therefore, he has no other option except to seek remedy from the very same Court by filing a petition under Section 151 of CPC. The learned Judge has misdirected and misplaced the materials, placing reliance of the Hon'ble Supreme Court in **2022 Live Law (SC) 698**. The Learned Counsel for the Petitioners placed the said ruling before this Court and stated that the said Judgement was pronounced under different context and it cannot be applied to the facts of this case. Therefore, he seeks to set aside the order passed by the Learned V Assistant Judge, City Civil Court, Chennai, in dismissing the IA.No.20374 of 2010.

4. Issue notice to the Respondents returnable by 14.03.2023.

Private notice is also permitted.



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SATHI KUMAR SUKUMARA KURUP, J.
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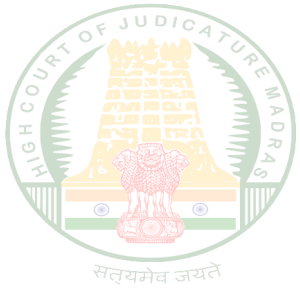
5. Post this matter on 13.03.2023.

6. There shall be an order of interim stay of the proceedings in OS.No.10391 of 2010 on the file of the Learned V Assistant Judge, City Civil Court, Chennai, till then.

14.02.2023

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