



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Monday, the Twenty Seventh day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice M.DURAISWAMY

CMP (MD) No.1938 of 2017

IN

SA (MD) No.1213 of 2011

S.SUBBIAH THEVAR

... PETITIONER/APELLANT

Vs

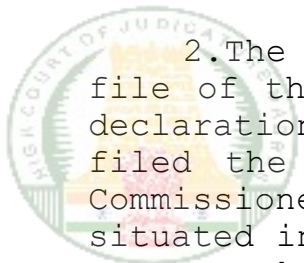
1.CHELLATHAI @ MADATHIAMMAL
2 V.GURUSAMY
3 V.THIRUVETTAPOTHI
4 THIRUVADUTHURAI AATHEENAM
THROUGH ITS ADHINAKARTHAR
SEERVALARSEER SIVAPRAKASA
PANDARA SANNADHI

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to appoint an Advocate/Commissioner, practicing before this court having sufficient knowledge and experience in civil matters and more particularly in the matter of survey of lands and direct him to inspect the lands in Survey Nos.413, 408 & 407 situated in Thirumalapuram, Sivagiri Taluk, Tirunelveli District, and note the physical features thereon and also locate and fix the boundaries of Survey Nos.413, 408 and 407 with the assistance of the District Surveyor by taking steps in accordance with the survey manual since no survey stones is available and fix the location of the well in detail and file a report with Surveyor's sketch in second appeal No.1213 of 2011.Preferred against the decree of the Court of the Suboridnate Judge,/Sankarankovil dated 07.07.2011 and passed As in 65/10(OS to 230 of 2004 on the file of the Court of the District Munsif cum Judicial Magistrate,Sivagiri.

ORDER : This petition coming on for hearing, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.M.VALLINAYAGAM, Senior counsel for MR.D.NALLATHAMBI, Advocate for the petitioners and of MR.J.BHARATHAN, Advocate for the Respondents 1 to 3 and of MR.B.BRIJESH KISHORE, Advocate for the 4th Respondent, the Court made the following order:-

The petitioner/plaintiff has filed the above Second Appeal challenging the Judgment and decree passed in A.S.No.65 of 2010 on the file of the Sub Court, Sankarankovil, reversing the Judgment and Decree passed in O.S.No.230 of 2004 on the file of the District Munsif cum Judicial Magistrate, Sivagiri.



2.The plaintiff filed the suit in O.S.No.230 of 2004 on the file of the District Munsif cum Judicial Magistrate, Sivagiri, for declaration and permanent injunction. The petitioner/appellant has filed the above petition seeking for appointment of an Advocate Commissioner to inspect the lands in Survey Nos.407, 408 and 413 situated in Thirumalapuram, Sivagiri Taluk, Tirunelveli District and to note down the physical features thereon and also to locate and fix the boundaries of Survey Nos.407, 408 and 413 with the assistance of the District Surveyor by taking steps in accordance with the survey manual, since no survey stone is available and to fix the location of the Well in detail and to file a report with Surveyor's sketch.

3.It is not in dispute that a Commissioner was appointed before the trial Court and the learned Commissioner filed his report along with Surveyor's sketch, which was marked as Exs.C.1 to C.3.

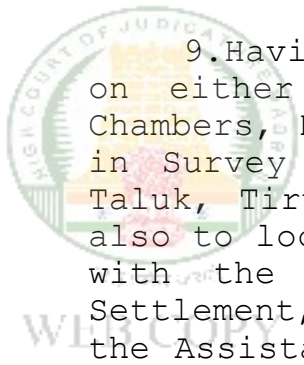
4.The learned counsel on either side submitted that the survey sketch filed before the trial Court does not reflect the correct details of the suit property. The petitioner/appellant has contended that in these circumstances, a fresh Commissioner can be appointed to measure the suit property with the assistance of the District Surveyor. The respondents 1 to 3 filed their counter. In the counter, though the respondents disputed the allegations made in the affidavit filed in support of the petition, the respondents 1 to 3 gave their consent for appointing an Advocate Commissioner to measure the lands in Survey Nos.407, 408 and 413. In paragraph No.3 of the counter, the respondents 1 to 3 have stated that they have already initiated criminal prosecution against the District Surveyor, hence there is a possibility of bias by the District Surveyor against them, therefore, the Assistant Director of Survey and Settlement, Tirunelveli may be directed to assist the Advocate Commissioner while measuring the suit lands.

5.Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioner/appellant agreed for the proposal made by the learned counsel for the respondents 1 to 3 and submitted that the Assistant Director of Survey and Settlement, Tirunelveli, may be directed to assist the Advocate Commissioner.

6.Mr.J.Bharathan, learned counsel appearing for the respondents 1 to 3 submitted that the Advocate Commissioner may be directed to measure the suit lands and fix the boundaries of Survey Nos. 407, 408 and 413 with the assistance of the Assistant Director of Survey and Settlement, Tirunelveli and may be directed to file his report along with the Surveyor's sketch.

7.The learned counsel on either submitted that Mr.A.Arumugam, Advocate, No.30, Law Chambers, Madurai Bench of Madras High Court, Cell No.9443773415 may be appointed as Advocate Commissioner in this matter.

8.The learned counsel appearing for the fourth respondent has no objection for the proposal made by the learned Senior Counsel appearing for the petitioner/appellant and the learned counsel appearing for the respondents 1 to 3.



9. Having regard to the submissions made by the learned counsel on either side, I appoint Mr. A. Arumugam, Advocate, No. 30, Law Chambers, Madurai Bench of Madras High Court, to inspect the lands in Survey Nos. 407, 408, 413 situated in Thirumalapuram, Sivagiri Taluk, Tirunelveli District to note down the physical features and also to locate and fix the boundaries of Survey Nos. 407, 408 and 413 with the assistance of the Assistant Director of Survey and Settlement, Tirunelveli, with the records and plans available with the Assistant Director of Survey and Settlement Office, Tirunelveli and also to fix the location of the Well in detail and file a report with the Surveyor's sketch. It is open to the parties to give memo of instructions to the Advocate Commissioner and it is open to the Advocate Commissioner to take a decision on the memo of instructions to be given by the parties.

10. The learned Senior Counsel appearing for the petitioner/appellant and the learned counsel appearing for the respondents 1 to 3 submitted that they would share the expenditure for appointing an Advocate Commissioner in this matter.

11. I fix the initial remuneration of the Advocate Commissioner at Rs. 50,000/- which shall be shared equally between the petitioner/appellant and the respondents 1 to 3. The Advocate Commissioner is directed to carry out the warrant of Commission after giving prior notice to all the parties. The parties shall bear the other incidental expenditure of the Advocate Commissioner equally.

12. The Assistant Director of Survey and Settlement, Tirunelveli, is directed to assist the Advocate Commissioner in executing the warrant of commission. The Assistant Director of Survey and Settlement, Tirunelveli, is also directed to produce all the relevant records which are required by the Advocate Commissioner while executing the warrant of commission. The Advocate Commissioner is directed to file his report along with the Surveyor's sketch within a period of four weeks.

13. Post the matter on 27.03.2017 for filing the report of the Advocate Commissioner.

sd/-

27/02/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

<https://hcservices.ecourts.gov.in/hcservices/>

1. The Subordinate Judge,
Sankarankovil.



2.The District Munsif-cum-Judicial Magistrate,
Sivagiri.

3.The Assistant Director of Survey and Settlement,
Tirunelveli.

4.Mr.A.Arumugam,
Advocate Commissioner,
No.30, Law Chambers,
Madurai Bench of Madras High Court,
Madurai.

(+Warrant)

+1cc to M/s.D.NALLATHAMBI, Advocate, in SR No. 11053

ORDER

IN

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IN

SA (MD) No.1213 of 2011

Date :27/02/2017

AAM-SV-MMS-SAR 3/1.3.2017/4P-6C