



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP(PD) (MD) No.567 of 2017
and
CMP(MD) No.2583 of 2017

K.Padiyan

... Petitioner

vs.

1.C.Alagu
2.N.Sankar
3.S.Chinnakaruppan
4.K.Muthu
5.S.Chinnaiah
6.K.Puthupuli
7.N.Karuppaiah
8.Sangaiah
9.K.Raman

... Respondents

Prayer:- Civil Revision Petition filed the under Article 227 of the Constitution of India, against the order and decreetal executable order dated 10.02.2017 passed in I.A.No. 297 of 2016 in O.S.No. 95 of 2014 by the Hon'ble District Munsif cum Judicial Magistrate, Natham.

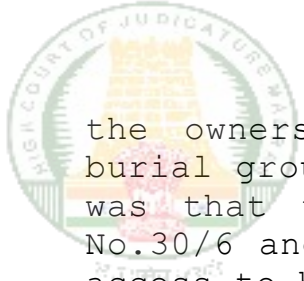
For Petitioner : Mr.Babu Rajendran

ORDER

This revision petition is filed challenging the order passed by the Trial Court in an application filed by the defendants under Order 26 Rule 9 CPC.

2.The contention of the revision petitioner is that the appointment of the Commissioner is nothing but an attempt to collect evidence by way of roving enquiry and this application is not filed with the bonafide intention.

3.The learned counsel for the petitioner submitted that when the suit was filed in the year 2014, alleging that the defendants and others are trespassing into his land to reach the burial ground and in the course of such action, caused damage to his field, written statement was filed by the defendants, accepting



the ownership of the suit property and also the existence of burial ground next to the plaintiff's land. Their only contention was that the plaintiff has encroached upon the land in Survey No.30/6 and a portion of the Odai causing hindrance to their free access to burial ground.

4.The learned counsel further contended that after 1½ years, the present application is filed when the matter is posted for trial. Therefore, this application is not a bonafide one. Hence, it should have been dismissed by the Trial Court. But, contrarily, the Trial Court has allowed the application.

5.According to the learned counsel for the revision petitioner, the burial ground is situated in Survey No.30/6 and to identify the suit property, FMB Sketch of the filed, adangal and the title deed are already part of the record and therefore, there is no necessity for appointment of any Advocate Commissioner, to inspect the suit premises and to note down the physical features.

6.Perusing the plaint and the written statement, this Court finds that even in the written statement, the defendants have made out a case that the plaintiff has encroached upon a portion of the lane leading to the burial ground and their attempt to measure it through the revenue officials was aborted at the instance of the plaintiff. Further, they have made a specific case that Survey No.116 has been subdivided into five divisions. The plaintiff has purchased the property pertaining to Survey No.118. Whereas, the Odai and the burial ground are in Survey No.30/6. Since there is some rival claim regarding the nature of the physical feature of the land in question, the Trial Court has allowed the Advocate Commissioner application so as to ascertain the veracity of the rival claims. This Court finds no error in such order of the Trial Court to interfere. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

The District Munsif cum Judicial Magistrate,
Natham.

+1 cc to Mr.Babu Rajendran , Advocate in SR.No. 16099

mm/nbi

AE/MR/27.03.2017/2P/3C

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

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