

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

C.R.P.(PD).No.1430 of 2011

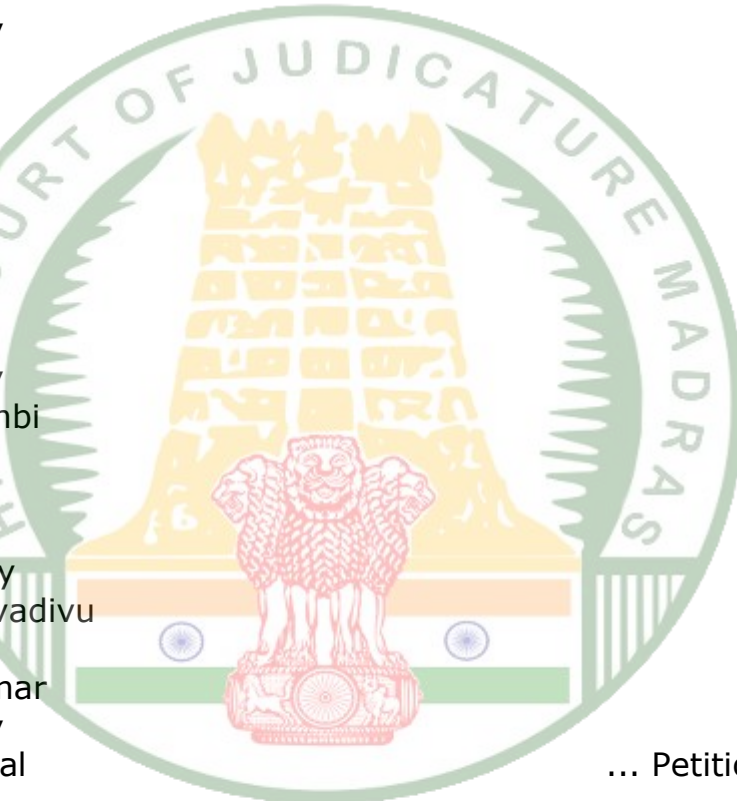
and

M.P.No.1 of 2011

1. Kandasamy
2. Ramasamy
3. Subramanian
4. R.Kolandavel
5. N.Kolandavel
6. Amirtham
7. Rajagopal
8. Subramaniam
9. Somasundaram
10. Duraisamy
11. Kangeyan
12. Sengottaiyan
13. Govindasamy
14. Rajamani
15. Balasundaram
16. Kailasam
17. Muruga Boopathi
18. Nalliappan
19. Pappathi
20. Thangammal
21. K.S.Kandasamy
22. Mani
23. Dinesh
24. Ramasamy
25. Rathinam
26. Ashokan
27. Ponnusamy
28. Periyannan
29. Palanisamy
30. Natarajan

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31. Athayee
 32. Natesan
 33. Seerangan
 34. Ganapathy
 35. K.S.Rajavel
 36. Periyasamy
 37. Lakshmi
 38. Krishnaveni
 39. Thirupathi
 40. Muthusamy
 41. Murugavel
 42. Sellamuthu
 43. Valarmathi
 44. Kaliannan
 45. Selvaraj
 46. Palanivel
 47. Ramasamy
 48. Ramasamy
 49. Muthusamy
 50. Chinnathambi
 51. Palanivel
 52. Kolandaivel
 53. Manickam
 54. Chinnusamy
 55. Shanmugavadivu
 56. Natesan
 57. Senthil Kumar
 58. Muthusamy
 59. Kunchammal



... Petitioners

Vs

T.S.R.Kanniyan

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India as against the order and decretal order passed in I.A.No.302 of 2010 in O.S.No.125 of 2010, on the file of the Principal District Court, Namakkal, dated 30.11.2010 and prays that the same may kindly be set aside.

For Petitioners : Mr.C.Jagadish

For Respondent : Mr.S.Thangavel

ORDER

The plaintiffs in O.S.No.125 of 2010 on the file of the Principal District Judge, Namakkal, who are 59 in number, are the revision petitioners herein. They now challenge the order dismissing their prayer for appointing a Commissioner in their application in I.A.No.302 of 2010. The suit is laid for bare injunction not to disturb the physical possession of the plaintiffs. In the written statement, the defendant disputes it.

2. The pleading on the rival sides broadly states that the property was a Wakf property which the defendant/respondent disputes. However, the pointed question that arises for consideration in the suit is who among the both sides is in physical possession of the property. This Court is informed that the trial of the case is yet to commence.

3. The learned counsel for the petitioners submits that inasmuch as the defendant/respondent has disputed the plaintiff's possession in his written statement and also claimed actual possession over the suit

property that he had purchased, it became imperative for the petitioners to demonstrate before the court about the existence of several structures / residential buildings in the suit property which would go a long way in proving their actual physical possession during trial. In the counter, the respondent primarily contended that the Commissioner cannot be appointed to find possession of the parties. In its impugned order dated 30.11.2010, the learned Principal District Judge, Namakkal has accepted the said contention of the respondent and has dismissed the same and it was now challenged by the petitioners.

4. The learned counsel for the petitioners submits that the learned District Judge has failed to appreciate that what was sought in the Commissioner's application was one of local inspection by a Commissioner to report on the nature of the property and the various structures available therein and that they have not endeavoured to seek Commissioner's view or opinion on the factum of possession, which as per law raised rests only within the jurisdiction of the Court to decide. He further argued that since the petitioners are 59 in number and inasmuch as the defendant is disputing the plaintiffs physical possession of the property it becomes necessary for the

petitioners to establish that there are structures in the property in the first place for which the Commissioner report would be of huge assistance.

5. The learned counsel for the respondent/defendant however, would contend that the petitioners claim to be in possession without any semblance of title, and that if the petitioners are in possession, it can be established by documentary evidence during trial.

6.1. Primarily, this Court finds the learned District Judge was in error in treating the Commissioner's application as one intended for finding the factum of petitioners' possession of the property when the prayer indicates it is not. That does not imply that the petition must necessarily be allowed. Whether the petitioners are in actual physical possession of several structures that they alleged as available in the suit property is a fact that still can be established dehors the Commissioner's report.

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6.2. Given fact that the suit is pending before the District Court since 2010, it is necessary for the trial court to commence a trial at the very earliest and if in the course of the trial, the trial court wants to

ascertain if any buildings as now contended by the petitioners are available in the suit property, then it may hear the parties and take a call at that point of time.

7. In the light of the above, this Court allows this revision petition and set aside the order dated 30.11.2010 in I.A.No.302 of 2010 in O.S.No.125 of 2010 on the file of the Principal District Court, Namakkal and remand the matter back to the trial court. The trial court is directed to commence the trial by first week of June, 2018, and to proceed with the trial without granting undue and undeserving adjournment to the parties, and to consider the question of appointing a Commissioner in the manner indicated above. No costs.

09.04.2018

Index:Yes/No

ssn

Note:Issue Order Copy on 13.04.2018.

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To

The Principal District Court,
Namakkal.



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N.SESHASAYEE, J.,

ssn



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and
M.P.No.1 of 2011**

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