

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2018

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THE HON'BLE MR. JUSTICE **D. KRISHNAKUMAR**

CRP.(PD).Nos.206 & 207 of 2016

and

C.M.P.No.1067 of 2016

Amaravathi

... Petitioner in both CRPs'

Vs.

1.Murugan

2.Govindaraj

3.Murugan

4.Muthuraj

5.Dharuman

6.Sivaraj

7.Easwaran

8.Murugesan

9.Beeran

10.Komban

11.Nagaraj

... Respondents in both CRPs'

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COMMON PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decretal orders dated 15.12.2015 in I.A.Nos.974 & 975 of 2015 respectively in O.S.No.126 of 2012 on the file of the Learned District Munsif, Palacode.

For petitioner : Mr.R.Selvakumar

For Respondents : Mr.R.Raja Ramani

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COMMON ORDER

These Civil Revision Petitions are filed against the fair and decreetal orders dated 15.12.2015 made in I.A.Nos.974 & 975 of 2015 respectively in O.S.No.126 of 2012 on the file of the Learned District Munsif, Palacode.

2.According to the petitioner, the petitioner/plaintiff has filed the suit in O.S.No.126 of 2012 on the file of the District Munsif, Palacode. In the aforesaid suit, written statement has been filed on 12.04.2013. Issues were framed on 12.07.2013 and thereafter additional issues were framed on 30.09.2015. At this stage, the respondents herein filed Interlocutory Applications in I.A.Nos.974 & 975 of 2015 to reopen and to appoint an Advocate Commissioner to inspect the property and submit the report along with the plan.

3.The learned counsel appearing for the petitioner submitted that the said applications were filed by the petitioner after the evidence and arguments were concluded and posted for Judgment.

There is no reason or materials to show in the said application for the appointment of an Advocate Commissioner. Without any reasons, the Court below allowed the application I.A.No.975 of 2015. Further, the learned counsel appearing for the petitioner would submit that the petitioner/plaintiff has filed the suit for declaration and permanent injunction. The duty of the plaintiff is to prove the case and prayed for the relief as such sought for in this suit and the above said application filed by the respondents/defendants is not maintainable and the application filed at the stage of the judgment is belated one. Therefore, the order of the Court below is set aside.

4.Per contra, the learned counsel for the respondents submitted that the additional issues have been framed by the trial Court on 03.09.2015 and thereafter, the above said case is posted for arguments. At this stage the present applications are filed to reopen and for appointment of an Advocate Commissioner to inspect the property and submit the report. The Court below, in order to minimize the evidence, has allowed the applications. Therefore, the orders of the Court below are liable to be dismissed.

5.This Court has considered the submissions of both the parties concerned and perused the materials on record. The aforesaid suit

was filed by the petitioner for declaration and permanent injunction against the respondents and it is an admitted fact that the evidence have concluded and the arguments were also concluded and additional issues have been framed on 30.09.2015 where, the defendants have path way right in the suit property. After the additional issues framed, the above said suit is posted for arguments on 20.11.2015.

6.The application I.A.No.975 of 2015 is filed by the respondents for appointment of an Advocate Commissioner to inspect the property and allowing the parties to collect the materials to show the factum of the suit property and the respondents/defendants claiming right over the suit property. The said factum of claiming the right has been adduced by way of oral and documentary evidence before the Trial Court in the said suit, at the time of trial in the said suit.

7.The additional issues framed in the suit, only in respect of path way right of the suit property, by the respondents/defendants. The issues can be decided by way of adducing evidence and producing materials before the Court below. Therefore, the appointment of an Advocate Commissioner to find out the right of the property could not be granted and therefore, the order passed by the Court below is liable to be set aside. At this stage the petitioner seeks this Court, liberty

may be granted to the petitioner to file an application for examining the additional evidence insofar as additional issues framed by the Court below.

8. In the light of the above facts and submissions, the order dated 15.12.2015 passed in I.A.Nos.974 & 975 of 2015 are set aside and the Civil Revision Petitions are allowed with liberty to the respondents to file an application, if so advised within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. However, there shall be no order as to costs.

15.03.2018

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To

The District Munsif,
Palacode.

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