



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (MD) (PD) .No.1565 of 2016

and

C.M.P (MD) .No.7611 of 2016

- 1.Muniasamy
- 2.Thirumani Selvam
- 3.Soundarapandian
- 4.Muthumari
- 5.Minor Sathia Ananthi
- 6.Minor Sathia Anitha
- 7.Minor Nagarjun
- 8.Ramar
- 9.Lakshmanan
- 10.Velmurugan

(Petitioners 5 to 7 are minors rep. By
their mother and natural Guardian/fourth petitioner)

...Petitioners

Vs.

- 1.Athimuthu
- 2.Thirumani Selvam
- 3.Palanichamy
- 4.Selvamurugan
- 5.Robinson
- 6.Manickam
- 7.Antony Rayappan
- 8.Arputham Jabamalai
- 9.Antony Nadar
- 10.Sekar
- Paulraj (died)
- 11.Antony Nadar
- 12.The Manager,

M/s.APR Constructions (P) Ltd.,
Subbiah Nagar, Pattinam Kathan Village,
Ramanathapuram Taluk & District.

...Respondents

(Notice to the respondents 1 to 4 are dispense with)

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India., to set aside the order passed in I.A.No.896 of 2015 in O.S.No.46 of 2011 by the District Munsif, Madurai dated 20.04.2016.



For Petitioners
For R5 to R9
& R12

:Mr.K.Kumaravel
: Mr.K.C.Ramalingam

ORDER

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The plaintiffs in O.S.No.46 of 2011 on the file of the District Munsif Court, Mudukulathur, are the revision petitioners herein. The said suit has been filed seeking the relief of declaration and permanent injunction. In the said suit, I.A.No.896 of 2015 was filed by them for appointing an Advocate Commissioner. The same was dismissed by order dated 20.04.2016. Questioning the same, this Civil Revision Petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the respondents would contend that the petitioners are not aware as to where the property in question is located. He would also point out that the suit in question was taken up for joint trial as O.S.No.51 of 2010, in which an Advocate Commissioner was appointed and he has also submitted his report. But then, the said suit came to be dismissed for default.

4.Though the submission of the learned counsel appearing for the respondents is attractive, this Court is of the view that inasmuch as the identity of the property has been seriously questioned by the defendants in O.S.No.46 of 2011, the Court below ought to have appointed an Advocate Commissioner to locate the property in question.

5.In this view of the matter, the order impugned in this Civil Revision petition is set aside and this Civil Revision Petition is allowed. However, it is made clear that the Court below, while issuing warrant for Advocate Commissioner, shall make it clear that the measurement will have to be made only in the light of sale deed dated 11.06.1971 and 29.11.1982, which have been shown as Document Nos.1 and 2 in the plaint. The defendants are of-course at liberty to lodge their objections.

6.This Court is of the view that obtaining of such report of the Advocate Commissioner would elucidate the matters in issue and reduce the volume of oral evidence, which may have to be let in by the parties. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //



1.The District Munsif, Mudukulathur.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC To MR.K.KUMARAVEL, Advocate SR. NO. 83422

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and
C.M.P (MD) .No.7611 of 2016

RMK
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