

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

C.R.P.No.4111 of 2019
and C.M.P.No.26822 of 2019

Selvamani

.. Petitioner/Petitioner/
Plaintiff

Vs.

Kandan (Deceased)

1. K.Jagadeesan
2. J.Radhika
3. J.Elayabharathi
4. J.Gokulsarathi
(Minor rep by Mr.K.Jagadeesan)

5. Kannammal

6. Poongothai

7. Jothi

8. Chitra

.. Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to set aside the Order dated 07.11.2019 passed by the learned District Munsif, Paramathi in I.A.No.1/2019 in I.A.No.434 of 2011 in O.S.No.110 of 2011.

For Petitioner : Mr.S.Senthil

O R D E R

Present revision has been filed against the order dismissing the petitioner's application filed under Order XXVI Rule 9 of C.P.C. for appointment of Advocate Commissioner to measure the suit pathway.

2. The petitioner has filed the suit in O.S.No.110 of 2011, on the file of the learned District Munsif, Paramathi, for declaration and for permanent injunction restraining the respondents herein from interfering with the XY pathway situate in Survey No.294/2 of Peramandampalayam Village and for removal of revetment as well as coconut saplings from the said pathway.

3. The suit has been filed in the year 2011. The petitioner has also filed an application in I.A.No.434 of 2011 for appointment of Advocate Commissioner to identify and measure the

XY pathway situate in Survey No.294/2 of Peramandampalayam Village. The Advocate Commissioner has also filed his report in the year 2012. Thereafter, the matter was listed for trial. After a gap of 8 years, the petitioner has filed another application for re-issue of warrant to the Advocate Commissioner to identify the survey number in which the suit pathway is located with the help of a surveyor. The trial Court by order dated 07.11.2019, dismissed the application stating that the application for re-issue of the warrant has been filed belatedly after a period of 8 years and the it is only to drag on the proceedings. Now, challenging the said dismissal order, present revision has been filed.

4. Heard the learned counsel appearing for the petitioner and also perused the records carefully.

5. The suit is pending from the year 2011. Now, after the commencement of the trial, the petitioner has come out with the present application after a period of 8 years for re-issue of warrant to the Advocate Commissioner to once again identify and measure the suit pathway. The trial Court after considering all aspects dismissed the said application. This Court does not find any illegality or irregularity in the same as the trial Court has rightly dismissed the application. There is no merit in the revision and the same is liable to be dismissed.

6. In the result, the civil revision petition is dismissed and the order and decretal order of the Court below, impugned in this revision petition, are hereby confirmed. Considering the fact that the suit is pending from the year 2011, the learned District Munsif, Paramathi, is directed to dispose of the suit in O.S.No.110 of 2011, on merits and in accordance with law, after giving opportunity to both the parties, within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kk

To
The District Munsif,
Paramathi.

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C.R.P.No.4111 of 2019 and
C.M.P.No.26822 of 2019

VGI (CO)
GS (07/08/2020)