WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.09.2019

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.R.P(MD)No.2520 of 2010
and
M.P(MD)No.1 of 2010

1.P.Gopala Dhas

Sameeba (died)

2.Sasidharan
3.Minor Purushothaman
4.Minor Iswarya ... Petitioners/Petitioners/ Plaintiffs

[Minor petitioners 3 and 4 are represented by the second petitioner.]

Vs.

1.Nadarajan
2.Thomas
3.Mari Retna Bai
4.Ravi
5.Gracy

6.The State of Tamil Nadu,
represented by
The Collector of Kanyakumari District,
Nagercoil.

7.The Tahsildar,
Kalkulam Taluk,
Kanyakumari District. ... Respondents/Respondents/ Defendants

Prayer : Petition filed under Article 227 of the Constitution of India against the order made in I.A.No.794 of 2010 in O.S.No.493 of 2008 on the file of the Principal District Munsif Court, Padmanabhapuram, dated 06.10.2010.

For Petitioners : Mr.V.M.Balamohan Thampi

For Respondents : Mr.R.Vijaya Kumar for R.1 to R.3
Mr.R.Sethuraman
Special Government Pleader for R.6 & R.7
No appearance for R.4 & R.5

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

WEB COPY

ORDER

This Civil Revision Petition has been filed against the order made in I.A.No.794 of 2010 in O.S.No.493 of 2008 on the file of the Principal District Munsif Court, Padmanabhapuram, dated 06.10.2010.

2. Heard both sides and perused the materials available on record.

3. The petitioners, who are the plaintiffs, filed the suit in O.S.No.493 of 2008 on the file of the Principal District Munsif Court, Padmanabhapuram, seeking the following reliefs:

> *"(i) The defendants 1 to 4 and their men be restrained from interfering in any manner with the possession and enjoyment of the plaintiffs over the suit property;*
>
> *(ii) The suit property be measured and demarcated with and of the resurvey plan of the suit property;*
>
> *(iii) The plaintiffs be given a decree to realise the cost of the suit from the defendants and their movable and immovable assets."*

4. Pending the suit, the petitioners/plaintiffs filed an application under Order 26 Rule 9 read with Section 151 of the Code of Civil Procedure, in I.A.No.794 of 2010 seeking (i) to appoint a Commissioner to measure the suit property with the aid of the resurvey plan and prepare the plan of the same; (ii) to note in the plan the available survey stones in the suit property and (iii) to report in detail about the physical features of the suit property. The trial Court, after contest, dismissed the said application vide order dated 06.10.2010.

5. Aggrieved thereby, the present Civil Revision Petition has been filed by the petitioners/plaintiffs.

6. The learned Counsel for the petitioners/plaintiffs has drawn the attention of this Court to the written statement filed by the seventh defendant in O.S.No.493 of 2008 and submitted that in the written statement, it is stated that unless the property is measured, it would not be feasible to ascertain as to whether the property said to have been encroached by the petitioners/plaintiffs is a river poramboke or in R.S.No.373/1, but in the same written statement, the seventh defendant has taken a plea that the petitioners/plaintiffs did not pay the necessary charges for survey of land and that the suit property is lying without any boundary stones and that the burden is on the petitioners/plaintiffs to establish the same and hence, the trial Court ought not to have dismissed the application for appointment of Advocate Commissioner and prayed for allowing this revision petition.

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

WEB COPY

7. Whereas the learned Special Government Pleader appearing for the respondents 6 and 7 would submit that the earlier suit filed by the petitioners herein in O.S.No.404 of 1983 on the file of the Principal District Munsif Court, Padmanabhapuram, was rejected and the appeal filed in A.S.No.82 of 1997 on the file of the Sub Court, Padmanabhapuram, was also dismissed and the said fact has been admitted by the petitioners/plaintiffs in the plaint itself and without challenging the said judgment and decree passed by the first appellate Court by way of second appeal and getting it set at naught, the prayer for the same relief cannot not be maintainable and that even in the present suit, the main relief itself is with regard to the measurement and demarcation of the suit property and unless and until the suit is taken up finally, no decision could be arrived at and only at the final stage, the Court may think of appointing an Advocate Commissioner or any person for the purpose of coming to any conclusion, provided the plea taken by the respondents 6 and 7 with regard to *res judicata* is answered by the civil Court and hence, prayed for the dismissal of this revision.

8. I find much force in the contention of the learned Special Government Pleader appearing for the respondents 6 and 7. Earlier, the plea of the petitioners/plaintiffs was rejected on the ground that the neighbours have not been made as parties. Even for the sake of argument that in the present suit, the neighbours have been made as parties, only at the final stage alone, the Court may have to decide with regard to the appointment of Commissioner, in case the plea of *res judicata* is not accepted by the said Court and at this stage, the trial Court was perfectly justified in rejecting the claim of the petitioners/plaintiffs and hence, this Court finds no reason to interfere with the order passed by the trial Court.

9. In fine, this Civil Revision Petition stands dismissed and the trial Court is expected to take up the suit in O.S.No.493 of 2008 on day-to-day basis and shall not adjourn the matter beyond seven working days at any point of time, as the suit is of the year 2008, and dispose of the same as expeditiously as possible and the parties are expected to co-operate with the trial of the case. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS-III)

/TRUE COPY/

Sub Assistant Registrar

To
The Court of Principal District Munsif,
Padmanabhapuram.

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

WEB COPY

COPY TO:
THE SECTION OFFICER,
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1 CC to M/s.V.M BALAMOHAN THAMBI, Advocate (SR-87140[F] dated 17/09/2019)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-86799[F] dated 16/09/2019)

C.R.P(MD)No.2520 of 2010
and
M.P(MD)No.1 of 2010
13.09.2019

rsb
JM/30.09.2019/4P/6C

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