

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(PD).No.4016 of 2015
and
MP.No.1 of 2015

1.S.Rajamanickam

2.P.Vijayalakshmi

3.J.Leelavathi Petitioners/Plaintiffs

Versus

1.Ramasamy

2.K.Shanmugam

3.K.Rengasamy

4.Varadappa Gounder

5.The State of Tamil Nadu
Rep. by District Collector,
Office of the Erode District Collector,
Perundurai Road,
Erode - 638 011.

6.The Commissioner,
Corporation of Erode,
Erode City Municipal Corporation,
Office of the Erode Corporation,
Brough Road, Erode.

7.The Assistant Commissioner,
Erode City Municipal Corporation Zone-IV
Erode District - 638 002. ... Respondents/Defendants

Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decreetal order dated 28.07.2015 made in I.A.No.680 of 2014 in O.S.No.384 of 2014 on the file of the I-Additional District Munsif Court, Erode.

For petitioners : Mr.Sundaravadhanan

For Respondents : Mr.V.Balamurugan (for R1 to R4)

: Mr.S.Jaganathan,
Government Advocate, (for R5 to R7)

ORDER

The petitioners herein are the plaintiffs in the suit in O.S.No.384 of 2014 and they have filed the above said suit O.S.No.384 of 2014 before the District Munsif Court, Erode, for permanent injunction restraining the defendants 1 to 4, the villagers and the residents of Periyasadayampalayam Village and Taluk, Erode, from using the suit property as burial ground either for burring or cremating the dead bodies. The suit was filed on the ground that the suit land is classified as Mandai poromboke and not a Mayanam poromboke, therefore, it cannot be used as a Mayanam.

2.Pending the suit, the plaintiffs have filed an application in I.A.No.680 of 2014 under Order XXVI and Rule 9 r/w Section 151 of CPC., for appointment of an Advocate Commissioner and the said application was dismissed by the Trial Court, on the ground that the entire property belongs to the Government, hence, for appointment of an Advocate Commissioner is not necessary and rejected.

3.The learned Government Advocate would submit that since the nature of the lands have been borne out from the A - Register book maintained by the office of the Tahisldhar, the Government will abide by the orders of this Court.

4.After perusing the plaint and written statement and taking note of the fact that the lands are classified as 'Kuttai Promboke', 'Mandhai Promboke' and 'Salai Promboke', this Court is of the view that it is the duty of the Government to make necessary arrangements to identify another land for burial ground to the villagers and this suit property cannot be allowed to be altered into another form. Therefore, with regard to the physical features of the property, and a local inspection is

necessary to be carried out where the physical features of the suit property can be noted and it is highly necessary. Therefore, the Civil Revision Petition is to be allowed.

5.In the result, this Civil Revision Petition is allowed and the order dated 28.07.2015 passed by the learned I-Additional District Munsif Court, Erode, in I.A.No.680 of 2014 in O.S.No.384 of 2014 is set aside. The Trial Court is directed to appoint an Advocate Commissioner, within a period of four weeks from the date of receipt of a copy of this order and the Advocate Commissioner has to file his report and plan, within a period of eight weeks thereafter and the Trial Court is directed to dispose the suit in O.S.No.384 of 2014, within a period of twelve weeks thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

klt

To
The I-Additional District Munsif Court,
Erode.

+1 cc to M/s.V.Balamurugan Advocate sr7767
+1 cc to M/s.A.Sundaravadhanan Advocate sr6817
+1 cc to the Government pleader sr6507

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