

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.4007 of 2018
and CMP No.22192 of 2018

1. Raji Reddy
2. Nagammal .. Petitioners

Vs.

1. Kannan
2. Nallathambi .. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order dated 28.02.2018 made in I.A. No.787 of 2017 in I.A.No.678 of 2017 in OS No.229 of 2017 on the file of the learned Sub Court, Mettur.

For Petitioner : Mr.S.Doraisamy
for M/s.V.Elangovan

ORDER

This matter is taken up for hearing through Video-Conferencing.

The plaintiffs in OS No.229 of 2017 have come up with this Revision against the dismissal of an Application filed by them seeking appointment of Advocate Commissioner to inspect the suit properties and file a report on the physical features.

2. The suit is for declaration and permanent injunction in respect of pathway. The application was resisted by the defendants contending that there were earlier proceedings in relation to the suit pathway and the very suit is barred by the *res judicata* in view of the judgment in OS No.116 of 1998. The right claimed by the plaintiffs with regard to the suit pathway was also denied pointing out that the said right has been negated in the earlier suit.

3. Accepting the defence, the Trial Court dismissed the application for injunction. It is stated that the Second Appeal is pending as against the judgment in AS Nos.37 and 38 of 2005 in this Court. The Trial Court had taken note of the pendency of the Second Appeal and had held that it will not be proper to appoint a Commissioner until a decision is reached in the Appeal.

4. I have heard Mr.S.Doraisami, learned counsel appearing for M/s.V.Elangovan, for the petitioner.

5. Considering the reasons assigned by the Trial court dismissing the application for appointment of Commissioner, I do not think that I can interfere with the discretion exercise by the Trial Court in a Revision. As pointed out by the Trial Court, the rights claimed in this suit are also subject matter of an Appeal pending in this Court. I therefore do not see any reason to interfere with the order of the Trial Court. The Civil Revision Petition therefore fails and it is accordingly **dismissed**.

6. However, considering the fact that the suit is in the year 2017 and the written statement has already been filed, the Trial Court is directed to dispose of the suit within a period of six months from the date of resumption of physical hearing in the Courts at Mettur. No costs. Consequently, the connected miscellaneous petition is closed.

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Index: No
Internet: Yes
Speaking order

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To

1. The Sub Judge,
Mettur
2. The Section Officer,
V.R.Section, High Court of Madras.



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R.SUBRAMANIAN, J.

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