



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.09.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD) No.2189 of 2013

&MP(MD).No.1 of 2013

WEB COPY

1.N.Rengasamy

2.A.Muthusamy

... Petitioners/Petitioners/Plaintiffs

vs.

1.Veeraragavan

2.The Commissioner,
Srivilliputhur Municipality,
Srivilliputtur,
Virudhunagar District.

3.Ragavan

4.Municipal Engineer,
Office of Municipality,
Srivilliputhur Town

..Respondents/Respondents/Defendants

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order and decree made in I.A.No.594 of 2013 in O.S.No.54 of 2011 dated 16.08.2013 on the file of the Additional District Munsif Court, Srivilliputhur.

For Petitioners : Mr.M.Thirunavukkarasu
For Respondents : Mr.M.Ashok Kumar for R1 & R3
Mr.P.Srinivas for R2 and R4

ORDER

The plaintiffs in O.S.No.54 of 2011 have come forward before this Court challenging the order passed in I.A.No.594 of 2013, which they had filed for appointing a Commissioner.

2.The revision petitioners/plaintiffs have filed the suit seeking to declare their right over certain properties and also claim that two of the properties are lying as pathway. There appears to be some dispute over this. The plaintiffs have filed the aforesaid application for appointing a Commissioner for local inspection.

3.The trial Court rejected the same on that ground that existence of a pathway can be ascertained by looking into the documents and based on that reasoning, it dismissed the petition.



4.Heard both sides and perused the materials placed on record.

5.Existence of a pathway can be ascertained to an extent from looking into the records, but, a Commissioner for local inspection always aids the Court in all stages of the proceedings as to how the property looks on lie. Indeed, this Court frequently witnesses that in cases where identity of the property or demarcation of the property or existence of a pathway or lane is in dispute, cases are proceeded without any Commissioner being appointed and his report made available to assist the Court. A Commissioner's report helps the Court to visualize how the property looks on lie. Indeed, the Courts itself should take some suo moto effort in this regard, for, the facts which the Commissioner's report generally provide is of great assistance to the Court when the matter reaches the appellate Courts.

6.In these circumstances, this Court deems it appropriate that the learned trial Judge ought not to have taken a narrow view of the matter but, instead ought to have endeavored to appoint a Commissioner.

7.In conclusion, this Civil Revision Petition is allowed and the order passed in I.A.No.594 of 2013 in O.S.No.54 of 2011 dated 16.08.2013 on the file of the Additional District Munsif Court, Srivilliputhur is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

8.The Civil Revision Petition is allowed and the trial Court is required to appoint an Advocate with reasonable exposure to civil side and who is reasonably regular in appearing before the Court as the Commissioner. Both parties can file such necessary memo before the Commissioner. The Commissioner can obtain assistance either from Taluk Surveyor or Municipal Surveyor depending on the requirements. Once the Commissioner has filed his report, the trial court is required to dispose of the suit within a period of six months thereafter.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Additional District Munsif Court,
Srivilliputhur.

2.The Section Officer (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai

+1 CC to Mr.M. ASHOK KUMAR, Advocate (SR-17594[F] dated
21/09/2020)

C.R.P. (PD) (MD)No.2189 of 2013
17.09.2020

VB (05.10.2020) 3P 5C