



C.R.P.(PD).No.442 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.442 of 2020

and

C.M.P.No. 2338 of 2020

Kuppusamy

.. Petitioner

Vs.

1.Manthirikumari

2.Veeramani @ Ilavarasan

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution

of India, praying to set aside the Fair and Decretal order dated 14.08.2019 in

I.A. No.154 of 2019 in O.S. No.160 of 2015 on the file of the learned

Principal District Munsif, Thindivanam, and thereby allow the Revision.

For Petitioner : Mr.N.Suresh

For Respondents : No Appearance

ORDER

Challenge in this Revision is to the order of the trial Court in I.A.

1/5



C.R.P.(PD).No.442 of 2020

No.154 of 2019, an application for appointment of Commissioner to inspect the suit property and file a report on the physical features.

2. The suit was filed by the petitioner seeking declaration of his title and permanent injunction. The property subject matter of the suit is situate in Survey Nos.129/2 & 129/3.

3. The defendants resisted the suit contending that their house is situate in S.No.129/1 and it was also claimed that S.No.129/1 is a larger area measuring about 335 sq.mrs. According to the defendants, the portion shown as ABCD by the plaintiff as an encroachment over his land in S.No.129/2 is actually situate in 129/1. Therefore, there is a dispute regarding the very lie of the land. It is only after the said defence being projected, the plaintiff came up with an application for appointment of Commissioner. The trial Court has dismissed the Application on the ground that it is an attempt to gather evidence.

4. Mr.N.Suresh, learned counsel appearing for the petitioner would vehemently contend that when the very lie of the land has been disputed in



C.R.P.(PD).No.442 of 2020

the plaintiff's suit for declaration, it is for him to place the best evidence available, before the Court, to demonstrate the lie of the land and to prove to the satisfaction of Court that he is entitled to the property. It is not an attempt to gather evidence.

5. The respondents though served are not appearing either in person or through counsel, duly instructed.

6. I have considered the submissions of the learned counsel for the petitioner. The trial is yet to commence. There is a dispute as to the lie of the properties. The parties claim title to the land in adjacent Survey Numbers, a Commissioner's report in such a case would evidently be a great help to the Court in reducing voluminous oral evidence that would be required to prove the lie of the land. It will also help the Court in effectively deciding the controversy before it. No doubt, a party cannot be allowed to use Order XXVI Rule 9 of CPC, as a machinery to gather evidence, but the very provision is intended to aid the Court to decide the dispute comprehensively. If the Court finds that by appointing the Commissioner,



C.R.P.(PD).No.442 of 2020

the dispute between the parties can be resolved comprehensively, the Court can always appoint a Commissioner. I am therefore unable to sustain the order of the trial Court. This Revision Petition is allowed and the order of the trial Court in I.A. No.154 of 2019 dated 14.08.2019 is set aside.

7. The trial Court is directed to appoint a Commissioner with a warrant to inspect the suit property along with a competent surveyor, measure the same with the help of the Revenue records and file a report on the lie of the property. The trial Court shall also fix the remuneration of the Commissioner.

15.12.2021

rkp

Internet : Yes

Index : No

Speaking order

To

The Principal District Munsif,
Thindivanam



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C.R.P.(PD).No.442 of 2020

R.SUBRAMANIAN, J.

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C.R.P.(PD).No.442 of 2020
and
C.M.P.No.2338 of 2020

15.12.2021