



CRP.PD.No.804/2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.804/2019 & CMP.No.5286/2019

[Video Conferencing]

1.Anjalai
2.Rajeswari
3.Krishnamoorthy

.. Petitioners /
Defendants 1, 2 & 4

Vs.

1.Lakshmi
2.Muthukrishnan

.. 1st Respondent /
Plaintiff
.. 2nd Respondent /
3rd Defendant

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 11.12.2018 made in IA.No.239/2018 in OS.No.304/2018 on the file of the learned Subordinate Judge, at Paramathy.

For Petitioners	:	Mr.T.I.Thirumalaisamy
For R1	:	Mr.P.Valliappan
For R2	:	No Appearance



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ORDER

- (1) This Civil Revision Petition is directed against the order dated 11.12.2018 passed in IA.No.239/2018 in OS.No.304/2018 filed by the revision petitioners who are defendants 1, 2 and 4 in the suit, dismissing the Interlocutory Application filed for appointment of an Advocate Commissioner to inspect the property and file a report.
- (2) Brief facts that are necessary for the disposal of this Civil Revision Petition are as follows.
- (3) The 1st respondent herein as plaintiff filed a suit in OS.No.304/2018 on the file of the Sub Court, Paramathi, [originally, OS.No.212/2012 on the file of the Sub Court, Namakkal], for partition of one-half share in the first schedule ; 1/6th share in the suit second schedule and 1/3rd in the suit third schedule property.
- (4) As seen in the plaint, the suit properties are described under three items. The 2nd petitioner herein/2nd defendant filed a written statement which was adopted by defendants 1 and 4 / petitioners 1 and 3 herein. In the written statement, it is specifically stated that the paternal grandfather of the 2nd revision petitioner/2nd defendant



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executed a Settlement Deed dated 17.10.2008 in respect of the property that lies in S.Nos.196/2 and 196/1. It is further stated in the written statement that though the document does not mention S.No.196/1, portion of property covered under the Settlement Deed would also fall in S.No.196/1. Hence, the revision petitioners filed an application in IA.No.239/2018 for appointment of Advocate Commissioner to submit a Report after inspecting the property that was shown as a property in the Settlement Deed dated 17.10.2008.

- (5) The prayer was to identify the property covered under the Settlement Deed dated 17.10.2008 as per the boundary description given in the document.
- (6) This Court is able to see that one of the issues that arise for consideration in the suit is regarding the identity of property covered under the Settlement Deed dated 17.10.2008. Therefore, the application filed by the revision petitioners/defendants 1, 2 and 4 cannot be thrown out summarily. However, the Trial Court, while rejecting the application observed that there is no necessity to find out the measurements or boundaries of the property in the suit.



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Further, it was observed that the application for appointment of Advocate Commissioner cannot be entertained in view of the directions of the Hon'ble Supreme Court and High Court to expedite the disposal of cases. But, absolutely there is no reference to the merits of the contentions raised by the parties before the Trial Court, particularly the point that was focused by the defendants 1, 2 & 4/ revision petitioners herein.

- (7) The learned counsel for the 1st respondent/plaintiff vehemently argued that the application to appoint the Advocate Commissioner is wholly irrelevant and unnecessary having regard to the issues that arise for consideration.
- (8) This Court is unable to appreciate the contention of the learned counsel for the 1st respondent/plaintiff. As observed earlier, the written statement filed by the revision petitioners herein, clearly indicate that one of the issues also relating to the identity of property which is the subject matter of the Settlement Deed dated 17.10.2008. Secondly, the learned counsel for the 1st respondent/plaintiff pointed out that the Lower Court has rightly



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dismissed the application for appointment of Advocate Commissioner as it was filed belatedly after closing the evidence on the side of plaintiff. It is also stated that the application was filed during the cross-examination of witnesses on the defendants side.

- (9) It should be always the endeavour of the Courts to give all opportunities to the litigants to lead evidence irrespective of the stage of proceedings unless serious prejudice is likely to be caused to the other side. The Courts endeavour should be always to accommodate parties to furnish more information and to obtain evidence in support of pleadings so that every issue can be decided or resolved more effectively with reasons. In this case, the learned counsel appearing for respondent is unable to point out any prejudice that is likely to be caused to the plaintiff.
- (10) Having regard to the view taken above, this Court is unable to sustain the order passed by the Trial Court.
- (11) Accordingly, the Civil Revision Petition is **allowed** and the order dated 11.12.2018 passed in IA.No.239/2018 in OS.No.304/2018



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by the learned Subordinate Judge, at Paramathy, is hereby **set aside.**

- (12) The Trial Court is directed to appoint an Advocate Commissioner indicating the scope of warrant that may be issued to the Advocate Commissioner. It is made clear that the Commissioner's Report should be confined to the identity of the property which is the subject matter of the Settlement Deed dated 17.10.2008. The Trial Court is also directed to dispose of the suit in OS.No.304/2018 **within a period of four months from the date of receipt of the Report of the Advocate Commissioner.** No costs. Consequently, connected miscellaneous petition is closed.

22.11.2021

AP
Internet : Yes

To
The Subordinate Judge
Paramathy.

S.S.SUNDAR, J.,



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