

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.585 of 2021
and C.M.P.No.4930 of 2021**

1.V.Parvadham
2.S.Palanisamy

...Petitioners

Vs

1.Sadachiammal
2.Palanisamy

...Respondents

Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 24.04.2019 made in I.A.No.1002 of 2017 in O.S.No.1099 of 2017 on the file of the II Additional District Munsif Court, Coimbatore.

For Petitioners : Mr.K.Myilsamy

For Respondents : No appearance

ORDER

Heard Mr.Myilsamy, learned counsel appearing for the revision petitioners.

2.I deeply appreciate the arguments put forward by the learned counsel for the petitioners.

3.The revision petitioners are the 1st and 3rd defendants in O.S.No.1099/2017, which suit is now pending on the file of the II Additional District Munsif Court at Coimbatore. The said suit had been filed for declaration of title and for permanent injunction by the plaintiffs. The plaintiffs had also filed I.A.No.1002 of 2017 seeking appointment of an Advocate Commissioner, to note down the physical features of the property and also a North-South pathway which had been mentioned in the plan which had been annexed along with the plaint and also to take photographs and to measure the suit schedule property with the assistance of the Taluk Surveyor. A detailed counter affidavit had been filed by the defendants.

They questioned the title of the plaintiffs to the suit property. They questioned the title of the plaintiffs to the pathway which according to the plaintiffs exist. In the same breath, the defendants have also stated that there is no such pathway. They have also stated that the allegation that the North-South pathway is the only available pathway to reach the main road by the plaintiffs is not correct which naturally means that there should be other ways of ingress and egress for the plaintiffs to approach the main road. All these aspects in the counter go to show that with respect to topography of the land or the lay of the land, there is a dispute which had arisen that will have to be resolved. To assist the Court in resolving such dispute, as an Officer of the Court, a Commissioner is encouraged to be appointed under Order 26 of CPC and giving various stipulations in the Rules as given in the said order, whose report, could always be objected to and who can also be subjected to cross examination. The Advocate Commissioner is only going to aid the Court in giving the physical features of the land. He is also going to aid and substantiate his report by filing photographs. The Advocate Commissioner will also be assisted in discharge of his warrant by a Taluk Surveyor. This is the relief sought for.

4. But however, the grievance of Mr. Myilsamy, learned counsel for the petitioners is that in the order which is under question in the present revision petition, the learned Judge had not given all these reasons but had stated that by appointment of Advocate Commissioner, the oral evidence would be minimized. That approach, in my considered opinion, is not correct. The plaintiff and the defendant to any suit should be encouraged to tender their best evidence and it is the duty of the Court to also ensure that they are not prevented from adducing evidence which are in their possession either by way of documents or by producing any other additional witnesses to substantiate their respective cases. The object of the Court should not be to minimize the oral evidence.

5. Further, Mr. Myilsamy, learned counsel for the revision petitioners is also aggrieved by the manner in which the order was passed, wherein the elaborate counter had not been referred to in the course of the order and the points stated in the counter have not been met while acceding to the appointment of an Advocate Commissioner. However, though the order

suffers from these infirmities, I would rather retain the operative portion of appointment of Advocate Commissioner since it is necessary in this particular case when there is an assertion that there is a pathway and a denial of such assertion of the existence of pathway and also when there is assertion that the said pathway is the only way to reach the main road by the plaintiffs and there is a denial of such averment by the defendants. The appointment of Advocate Commissioner will certainly not prejudice the defendants. I am confident that the learned counsels who appears in the Trial Court would also take up the opportunity of filing objections, if required to any report filed by the Advocate Commissioner and both the plaintiffs and the defendants would also have full opportunity to summon the Advocate Commissioner to graze the witness box with respect to the report filed by him. Let the order of the learned II Additional District Munsif Court, Coimbatore stand. I find that an Advocate Commissioner had already been appointed and let the Advocate Commissioner be issued with necessary warrant to put in effect the order already passed.

6.I do not find any reason to interfere with the order passed by the learned II Additional District Munif, Coimbatore as the ends of justice is done by such appointment even though the order suffers from some infirmities. The order is accordingly retained.

7.With the above observations, the Civil Revision Petition is disposed of. No order as to costs. Consequently, connected miscellaneous petition is closed.

17.04.2021

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Index: Yes/No
Internet: Yes/No

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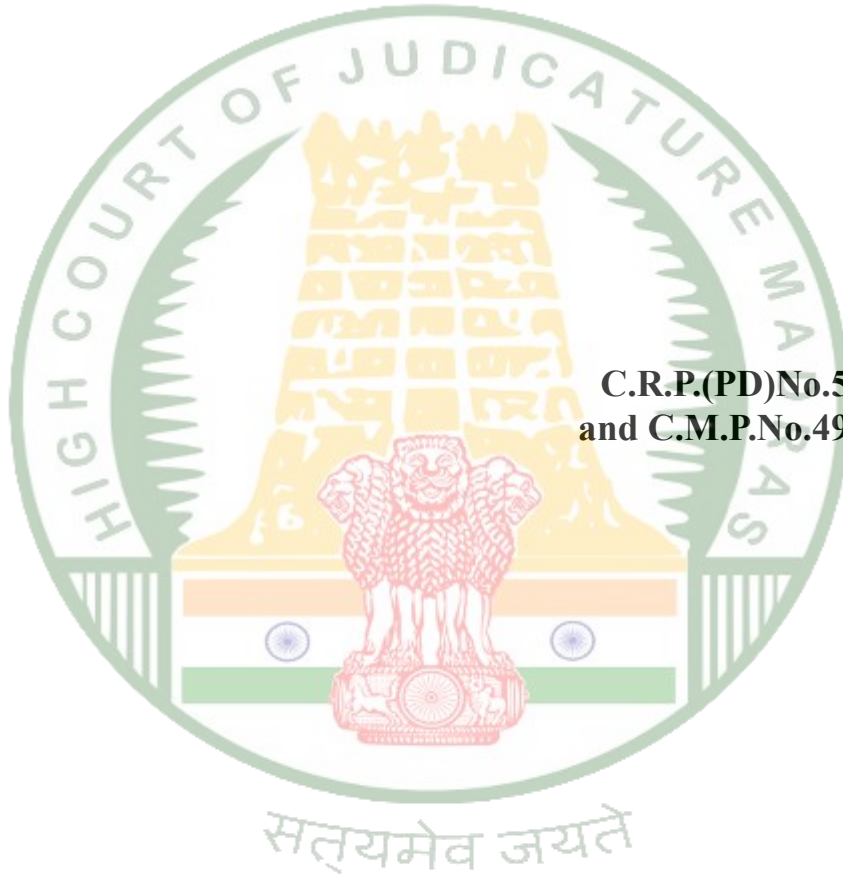
The II Additional District Munsif,
Coimbatore.

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C.V.KARTHIKEYAN, J,

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