

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No.867 of 2021
and
CMP.No.7129 of 2021

Shameena Begum ... Petitioner/Plaintiff

Vs.

1.Ramalingam

2.Rajeswari

3.Sasikumar

4.Ranjith

5.Vediyappan

6.Suguna

... Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India seeking to set aside the order dated 21.12.2020 made in IA.No.02 of 2019 in O.S.No.57 of 2019, on the file of the District Munsif Court, Uthangarai and thereby allow the above interlocutory application.

For Petitioner : Mr.Arokia Dass

For Respondents : No appearance

ORDER

(This case has been heard through video conference)

The Civil Revision Petition has been filed by the plaintiff in O.S.No.57 of 2019, pending on the file of the District Munsif Court, Uthangarai, questioning the order, dated 21.12.2020, in I.A.No. 2 of 2019 which application had been filed taking advantage of Order XXVI Rule 9 and Section 151 CPC., seeking for appointment of an Advocate Commissioner. The plaintiff had instituted the suit seeking a Judgment and decree of Declaration of title and also for Permanent Injunction.

2.It is the case of the plaintiff that on 10.03.2017, the defendants had encroached and had removed the boundary stones, which was lying in between the plaintiff's and the defendant's properties. On that occasion, the plaintiff had lodged a complaint at the police station. As a fact, the lodging of the complaint and the fact that the police had enquired into the entire issue have also been stated in the written statement. Thereafter, in the year 2019, the suit was filed after 2 years and the immediate cause of action for institution of the suit was that the defendants were preventing the plaintiff from carrying on agricultural activities. Along with the plaint, the plaintiff had also filed the instant

application seeking for appointment of an Advocate Commissioner, which was refused. Questioning that order, the present Civil Revision petition has been filed.

3.The learned Judge had dismissed the said application in I.A.No.2 of 2019, stating that reasons for appointment of an Advocate Commissioner had not been stated. Mr.Arokia Doss, learned counsel who appeared on behalf of the revision petitioner would point out that in the affidavit filed in support of the Interlocutory application, it had been stated that the boundary stones had been removed in the year 2017 and that there was an interference in carrying on agricultural activities.

4.In the year 2019, primarily, the plaintiff would have to establish his case and have to establish the title over the property which is mentioned in the schedule. He will also have to establish possession. At that point of time, if there is a dispute with respect to the area mentioned by the plaintiff and if this is questioned during the cross examination of the plaintiff, then the plaintiff, to substantiate his evidence, can seek for appointment of an Advocate Commissioner.

5.The Advocate Commissioner cannot be appointed for collection of evidence. It is a burden cast on the plaintiff to establish his case. When there is a particular issue questioning the layout of the land particularly with respect to the boundary between the plaintiff's property and the defendant's property, then to determine the physical features, an Advocate Commissioner can be appointed. This would have to follow the evidence given by the plaintiff and only when such evidence is challenged by the defendant during the course of evidence.

6.Therefore, I am not inclined to interfere with the order passed by the District Munsif Court, Uthangarai, dated 21.12.2020 made in I.A.No.02 of 2019. However, it is open to the plaintiff to first lead evidence in the suit and then depending upon the nature of evidence, seek for appointment of an Advocate Commissioner if required. If there is no requirement for appointment of an Advocate Commissioner, the trial court shall continue further with the trial.

7.With the said observations, the Civil Revision Petition stands dismissed. Consequently, the connected miscellaneous petition also stands dismissed. No order as to cost.

19.04.2021

Index:Yes/No
Internet:Yes/No
ssi

To

The District Munsif Court, Uthangarai.

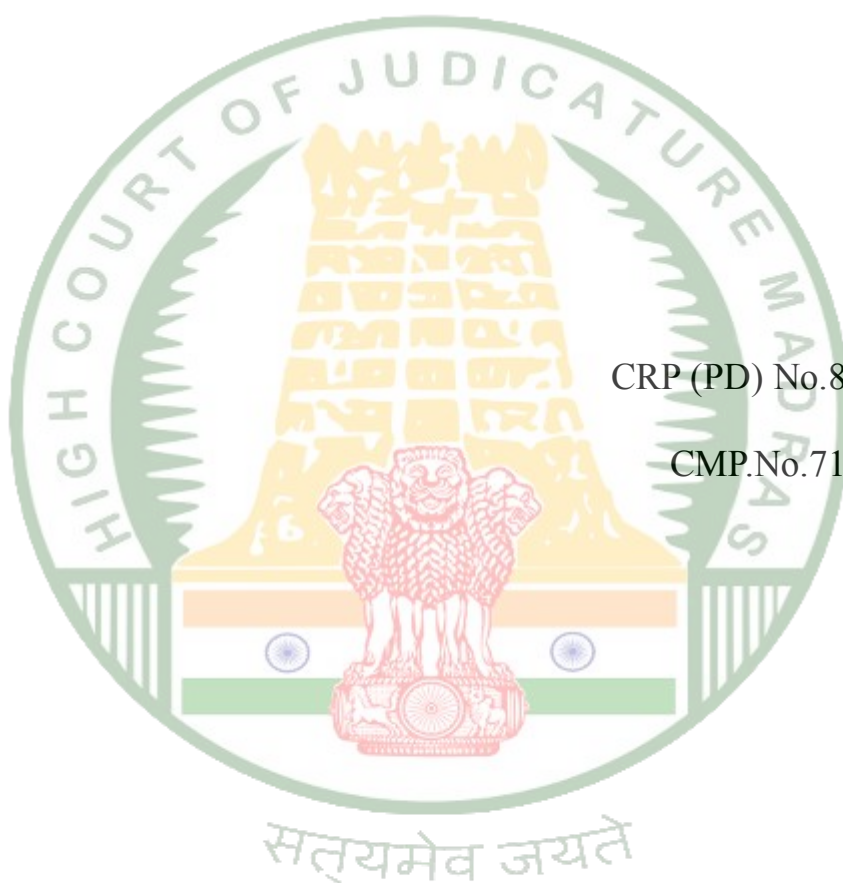


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C.V.KARTHIKEYAN, J.,

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