

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1422 of 2016
and C.M.P.No.7849 of 2016

- 1.C.Natesa Gounder (died)
- 2.Vinham Ammal
- 3.Pilavamani
- 4.Selvam
- 5.Kalaiselvi

... Petitioners

(Petitioners 2 to 5 brought on record
as legal heirs of the deceased petitioner
viz., C.Natesa Gounder vide Court order dated
02.09.2021 made in C.M.P.Nos.13407, 13409
and 13411 of 2021 in C.R.P.(PD)No.1422 of 2016)

Vs.

- 1.C.Gurusamy
- 2.G.Velmurugan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the
Constitution of India against the fair and decretal order dated 02.02.2016

made in I.A.No.49 of 2016 in O.S.No.274 of 2015 on the file of the Additional District Munsif Court, Vellore.

For Petitioners : Mr.P.Seshadri

For Respondents : Mr.E.Kannadasan

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

Civil Revision Petition is filed against the fair and decretal order dated 02.02.2016 made in I.A.No.49 of 2016 in O.S.No.274 of 2015 on the file of the Additional District Munsif Court, Vellore.

2.Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondents and perused the entire materials on record.

3.The 1st petitioner is plaintiff and respondents are the defendants in O.S.No.274 of 2015 on the file of the Additional District Munsif Court, Vellore. Pending Civil Revision Petition, the 1st petitioner died and his

legal heirs were impleaded as petitioners 2 to 5. The 1st petitioner filed suit for declaration of title and permanent injunction restraining the respondents from interfering with the 1st petitioner's possession and enjoyment of the schedule of property. The 1st petitioner also filed I.A.No.1143 of 2015 for interim injunction pending suit. The petitioner filed I.A.No.49 of 2016 under Order XXVI Rule 9 of C.P.C. and Section 151 of C.P.C. for appointment of Advocate Commissioner for inspecting the schedule of property to ascertain whether there is any well in the schedule of property and to file a report.

4. According to the 1st petitioner, in paragraph 5 of the plaint, he has stated that he is owner of the suit property, he has dug a well, obtained service connection and installed 3 H.P. motor pump set for cultivating wet crops. The respondents in the counter affidavit filed in I.A.No.1143 of 2015 for interim injunction, denied ownership of the 1st petitioner, also denied existence of the well in the suit property and hence, prayed for appointment of Advocate Commissioner.

5.The respondents filed counter affidavit and stated that there is no well in the suit property. The 1st petitioner cannot seek appointment of Advocate Commissioner for collection of evidence. The 1st petitioner has to prove his claim by letting in oral and documentary evidence and prayed for dismissal of the said I.A.

6.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the I.A. holding that existence of the well is not an issue in the suit and 1st petitioner has to prove his claim of title by letting in oral and documentary evidence.

7.Against the said fair and decretal order dated 02.02.2016 made in I.A.No.49 of 2016 in O.S.No.274 of 2015, the petitioners have come out with the present Civil Revision Petition.

8.From the materials available on record, it is seen that in the suit for declaration and injunction filed by the 1st petitioner, he stated that he has dug a well in the suit property, installed a pump set and cultivating

wet crops. On the other hand, it is the case of the respondents that they are the owners of the suit property and there is no well existed in the suit property. In view of the above dispute, if an Advocate Commissioner is appointed to note down whether the well is in existence in the suit property or not, the report of the Advocate Commissioner will reduce the evidence to let in and also assist the Court to decide the issue in the suit. The report of the Advocate Commissioner is not a final, which will not decide the issue of declaration and possession of the petitioners. The finding of the learned Judge is that the real dispute is not with regard to existence of the well in the suit property, but the dispute is only with regard to survey number of the suit schedule property. The said reasoning is not correct, as the respondents are denying the existence of well in the suit property. When there is a dispute with regard to suit property, the report of the Advocate Commissioner will assist the Court to decide the issue. In view of the same, appointment of Advocate Commissioner to note down whether there is a well is in existence in the suit property or not, will not prejudice the respondents.

9.For the above reasons, the order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.49 of 2016 is allowed. I.A. is remitted to the learned Judge and the learned Judge is directed to appoint an Advocate Commissioner with a specific direction to find out whether there is a well in the suit property or not and to file a report.

10.With the above directions, the Civil Revision Petition stands allowed. The suit is of the year 2015 and the learned Judge is directed to give a direction to the Advocate Commissioner to execute the warrant within a period of two months from the date of receipt of a copy of this order and dispose of the suit as expeditiously as possible, within a period of six months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

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27.09.2021

Index : Yes/No
Internet: Yes/No
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C.R.P.(PD)No.1422 of 2016

V.M.VELUMANI,J.

Kj

To

Additional District Munsif, Vellore.

C.R.P.(PD)No.1422 of 2016
and C.M.P.No.7849 of 2016



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