

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).Nos.630 & 631 of 2017

and

C.M.P.Nos.3208 & 3209 of 2017

Selvi .. Petitioner
[in C.R.P.(PD).No.630 of
2017]

Rajeswari .. Petitioner
[in C.R.P.(PD).No.631 of
2017]

Vs.

Dharmapuri Hale Sunnath Jamath,
Rep. by its Secretary,
D.S.Aqbal,
having Office at
No.16 – A, Keel Mosque Street,
Dharmapuri Town & Taluk,
Dharmapuri District.

.. Respondents
[in both C.R.Ps]

Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India against the fair and decretal orders dated 05.11.2016 passed in I.A.No.965 of 2016 in O.S.No.112 of 2015 & I.A.No.966 of 2016 in O.S.No.113 of 2015 on the file of the District Munsif Court, Dharmapuri.

In both the cases:

For Petitioner : Mr.P.Valliappan

For Respondent : Mr.Arun Anbumani

COMMON ORDER

(These matters are heard through “Video Conferencing/Hybrid Mode”).

These Civil Revision Petitions are filed against the fair and decretal orders dated 05.11.2016 passed in I.A.No.965 of 2016 in O.S.No.112 of 2015 & I.A.No.966 of 2016 in O.S.No.113 of 2015 on the file of the District Munsif Court, Dharmapuri.

2.The issues involved in both the Civil Revision Petitions are one and the same and hence, these Civil Revision Petitions are disposed of by this common order.

3.The petitioner in C.R.P.(PD).No.630 of 2017 is the plaintiff in O.S.No.112 of 2015 and the petitioner in C.R.P.(PD).No.631 of 2017 is the

plaintiff in O.S.No.113 of 2015 and the respondent is 10th defendant in both the suits on the file of the District Munsif Court, Dharmapuri. The petitioners filed the said suit for permanent injunction restraining the respondent, who is the 10th defendant and defendants 1 to 9 and their men from interfering with their peaceful possession and enjoyment of the suit property.

4. According to the petitioners, they are in possession and enjoyment of the suit property and respondent, who is the 10th defendant and defendants 1 to 9 are trying to interfere with their possession and enjoyment of the suit property. The respondent filed I.A.No.965 of 2016 in O.S.No.112 of 2015 and I.A.No.966 of 2016 in O.S.No.113 of 2015 under Order XXVI Rule 9 C.P.C. for appointment of advocate commissioner to inspect the suit property along with the Village Administrative Officer and Surveyor to note down the physical features of the suit property. According to respondent, the suit property along with other properties were gifted to Muslim community people and the suit properties were used as Burial Ground by the Muslim community and they are enjoying the same. There are evidence for having used the suit properties as Burial Ground. The petitioners tried to demolish the Tomb and respondent and other community people prevented the same. In view of the same, an advocate commissioner has to be appointed to inspect the property

along with the help of Village Administrative Officer and Surveyor to note down the physical features of the suit property. The petitioners in both the Civil Revision Petitions filed counter statement in the said applications and denied that suit property is in the possession of Muslim community people and are being used as Burial Ground. The petitioners contended that they filed suit for permanent injunction restraining the respondent, who is 10th defendant and nine others / defendants 1 to 9 from interfering with their peaceful possession and enjoyment of the suit property. In the said suits, appointment of advocate commissioner to note down the physical features of the said property is not necessary. The respondent without filing written statement, filed the present I.A. only to drag on the proceedings and prayed for dismissal of both the I.As.

5.The learned Judge considering the averments in the affidavit, counter affidavit and documents marked by the petitioners and respondent, held that the issue in the suit can be decided only by appointing advocate commissioner to note down the physical features and no prejudice will be caused to the petitioners and appointed an Advocate as Commissioner and directed the advocate commissioner to inspect and measure the suit property along with the help of Village Administrative Officer and Surveyor after issuing notice to

the parties.

6. Against the said orders dated 05.11.2016 passed in I.A.No.965 of 2016 in O.S.No.112 of 2015 & in I.A.No.966 of 2016 in O.S.No.113 of 2015, the petitioners have come out with the present Civil Revision Petitions.

7. The learned counsel appearing for the petitioners submitted that the petitioners filed suit for bare injunction restraining the respondent, who is 10th defendant and defendants 1 to 9 and their men from interfering with their peaceful possession and enjoyment of the suit property. It is for the petitioners / plaintiffs to prove their possession in the suit property and that respondent and other defendants are interfering with their possession. There is no dispute with regard to identification of the property. In such case, appointment of advocate commissioner is not necessary. In a suit for injunction, evidence cannot be collected by appointing advocate commissioner. The learned Judge exceeded her jurisdiction and on erroneous reason, allowed the I.A. and appointed the advocate commissioner. In support of his contention, the learned counsel relied on the following judgments and submitted that in a suit for injunction, advocate commissioner cannot be appointed to collect evidence and only if there is any dispute with regard to identification of the property, commissioner can be appointed. In the present case, there is no dispute with

regard to identity of the property and there is no necessity for appointing advocate commissioner and prayed for setting aside the order of the learned Judge and also prayed for allowing both the Civil Revision Petitions.

(i) Order of this Court reported in **2006 (5) CTC 494, (Chinnathambi and others Vs. Anjalai)**;

(ii) Judgment of this Court reported in **2008 (3) CTC 597, (K.M.A.Wahab and 5 others Vs. Eswaran and another)**;

(iii) Judgment of this Court reported in **2008 (5) CTC 181, (Meenakshi Vs. Vennila and another)**;

(iv) Judgment of Madurai Bench of this Court reported in **2009 (5) CTC 706, (Elango Vs. Kasthuri)**;

(v) Judgment of this Court reported in **2014 (1) MWN (Civil) 262, (Kandasamy and another Vs. Syed Hashim)**;

(vi) Judgment of Madurai Bench of this Court reported in **2016 (3) MWN (Civil) 527, (Sevugan and another Vs. Chinnathambi)**;

(vii) Judgment of this Court reported in **2017 (3) MWN (Civil) 627, (A.Meganathan Vs. S.Ramalingam)** and

(viii) Judgment of Madurai Bench of this Court reported in **2020 (1) CTC 182, (S.Anand and others Vs. A.Jeyabalan and others)**.

8.Per contra, the learned counsel appearing for the respondent contended that the respondent is maintaining the property and the same is used as Burial Ground for Muslim community people. The patta is in the name of Wakf Board and the petitioners fraudulently obtained pattas in their names. The respondent has taken steps to cancel the pattas issued in the name of the petitioners. The petitioners tried to demolish the property and respondent and other Muslim Community prevented the same. He further submitted that the property is used as Burial Ground and Tombs are in existence. There is a dispute with regard to identity and nature of the property and petitioners are trying to demolish the Tombs which are in existence in the suit property. In view of the same, appointment of advocate commissioner is necessary to find out the nature of the property. The learned counsel also submitted that the advocate commissioner inspected the suit property and filed a report before this Court granting interim order. The petitioners have filed the present suit with false averments. Unless the physical features are noted down, the issue in both the suits cannot be decided. The learned Judge considering the entire materials, appointed the advocate commissioner and has given proper and valid reason for the same. There is no error in the said order of the learned Judge warranting interference by this Court. In support of his contention, the learned counsel relied on the following judgments and

prayed for dismissal of both the Civil Petitions:

(i) Order of this Court reported in **2000 (1) CTC 279, (Pillaiyar Vs. Ganesan and another)**;

(ii) Common order of Madurai Bench of this Court reported in **2015 3 LW 121, (Thangammal Vs. K.Kumarasamy and another)**;

(iii) Order of this Court dated 09.02.2018 made in **C.R.P.(PD).No.1162 of 2015, (Peria Sekkadu Girama Narpani Membaadu Podhu Nala Sangam Vs. Selvam and others)**;

(iv) Order of this Court reported in **2016 SCC Online Mad 5669, (Muthulakshmi and others Vs. Selvaraj and another)** and

(v) Order of this Court reported in **2019 SCC Online Mad 13382, (M.Vadivel and another Vs. R.Nallasamy and others)**.

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

10. From the materials on record, it is seen that the petitioners have filed the suit for permanent injunction, restraining the respondent, who is 10th

defendant and defendants 1 to 9 and their men from interfering with their possession and enjoyment of the suit property. In the suit for permanent injunction, it is for the plaintiffs / petitioners to prove their possession by letting in oral and documentary evidence. In the suit for injunction, the title of the suit property is not the issue. According to the petitioners, the suit property is an agricultural land, whereas, according to respondent, it is a Burial Ground used by the Muslim community people. It is the further case of the respondent that petitioners are trying to demolish the Tombs in the suit property and Muslim Community people prevented the same. Thus, there is a dispute with regard to nature of the property and the contention of the respondent is that petitioners are trying to change the nature of the suit property. In such circumstances, even though the suit is for bare injunction, the appointment of advocate commissioner to note down the physical features will reduce the oral evidence and it will help the Court to come to the proper conclusion with regard to nature of the property. In view of the above, the judgments relied on by the learned counsel appearing for the respondent are squarely applicable to the facts of the present case. The learned Judge has considered all the materials placed before him in proper perspective and exercising her jurisdiction conferred on her, has allowed both the I.As by giving cogent and valid reason. There is no error in the said order of the

learned Judge warranting interference by this Court.

11.For the above reason, both the Civil Revision Petitions are dismissed. The learned counsel appearing for the petitioners submitted that in view of the interim order granted by this Court, the petitioners have not filed any objection to the report of the advocate commissioner and seeks permission of this Court to file objection within four weeks from the date of receipt of this order. It is open to the petitioners to file objection to the advocate commissioner's report. Consequently, the connected Miscellaneous Petitions are closed. No costs.

31.08.2021

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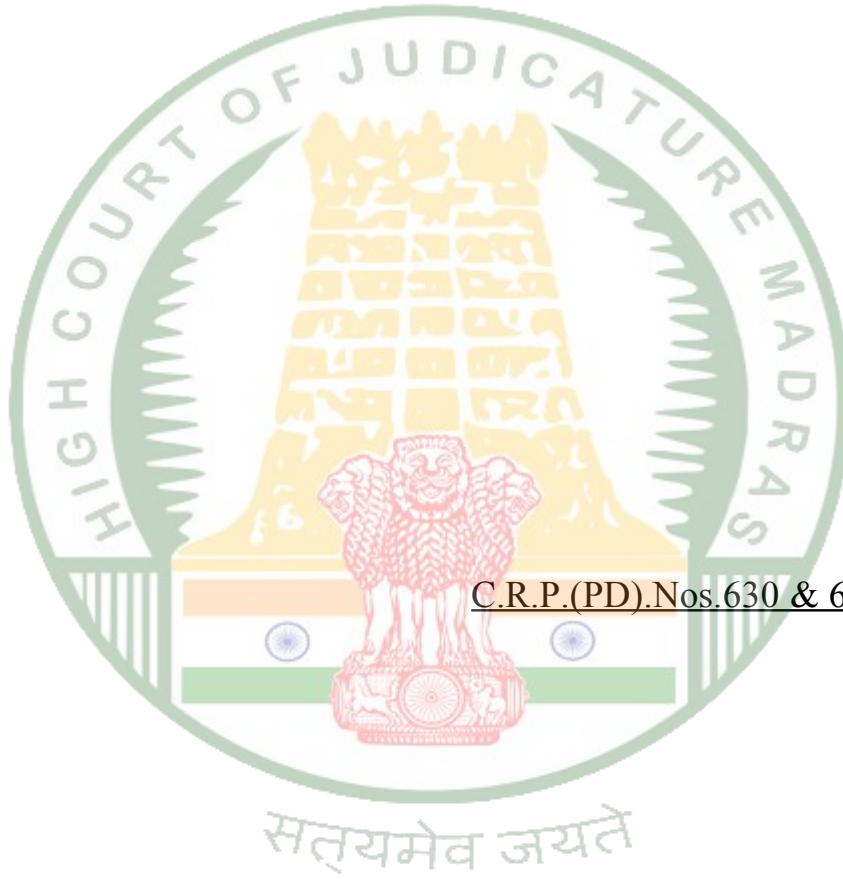
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Internet : Yes / No

To

The District Munsif,
Dharmapuri

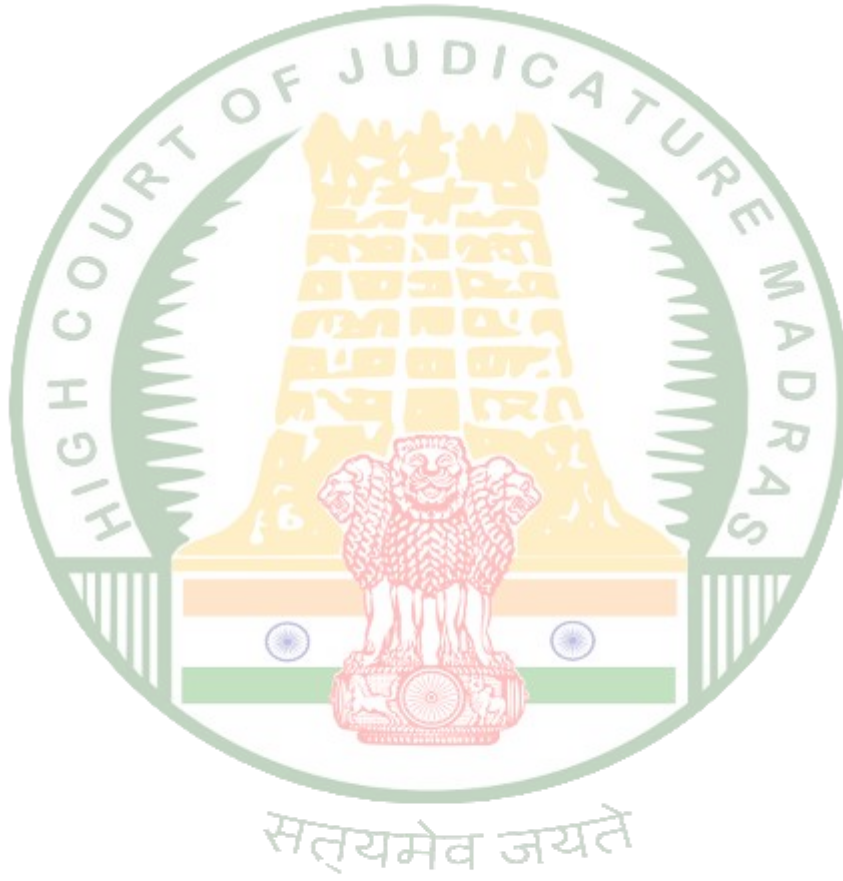
V.M.VELUMANI, J.
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