



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.559 of 2021

and

CMP(MD)No.3012 of 2021

Vijayalakshmi

... Petitioner

vs.

- 1) Sundarammal
- 2) Mariappan
- 3) Paramasivan
- 4) Arunachala Thevar @ Chinnakutti
- 5) Velusamy
- 6) S.Mariappan
- 7) Kanagamuthu
- 8) Subbulakshmi
- 9) Veyilatchi
- 10) Mariappan
- 11) Cauvery Kannan
- 12) Subbaiah Thevar
- 13) Kulala Mani
- 14) Muthuramalingam

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the order passed in I.A.No.14 of 2019 in O.S.No.282 of 2005 on the file of the District Munsif Court, Kovilpatti, dated 12.02.2020.

For Petitioner

: Mr.C.Selvakumar

ORDER

Against the dismissal of the commissioner application, this revision petition is filed by the 1st defendant.

2.The respondents 1 to 3 as plaintiffs filed a suit in O.S.No.282/2005 against the revision petitioner/1st defendant and respondents 4 to 14/defendants 2 to 12 for declaration and injunction in respect of the suit properties. Pending suit, the defendants 1 and 8 to 12 filed I.A.No.14/2019 for appointment of advocate commissioner to note down the physical features and to count the plots besides the public road available in the suit schedule properties. The Court below dismissed the said I.A., by



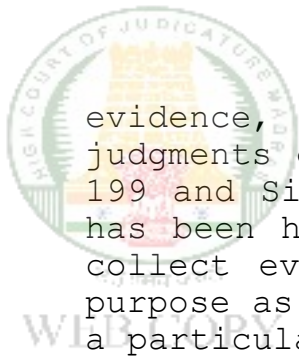
impugned order dated 12.02.2020, against which, this revision petition is filed by the 1st defendant.

3.The learned counsel for the revision petitioner would state that the suit properties have been undervalued by the plaintiffs in order to pay the lesser court fee and on that score, the suit has to be dismissed, for which, the above commissioner application was filed, but the Court below on erroneous appreciation that commission is sought for to gather evidence, dismissed the I.A. He would further state that the Court below has erred in holding that the issue involved in the commissioner application can be sorted out by going through the revenue records, completely overlooking the fact that the ground realities cannot be brought to light in the absence of commissioner's report. Thus, he would pray for setting aside the impugned order.

4.Heard the learned counsel for the petitioner. In view of the order going to be passed, notice to the respondents is not necessary.

5.Perusal of record shows that the respondents 1 to 3/plaintiffs filed the above suit for declaration and injunction. Pending suit, the revision petitioner/1st defendant and respondents 10 to 14 herein/defendants 8 to 12 filed the above commissioner application contending that suit items 6, 7, 9 and 10 have been undervalued for the purpose of paying lesser court fee and the plaintiffs ought to have valued the above suit items by taking into account the originality and the ground reality of the suit properties. It was further contended that the schedule properties were converted as house sites even before filing of the suit and in the suit 6th item, the petitioners in the commissioner application donated 30 cents of land to the Government for the purpose of laying road, but suppressing the same, the suit properties have been valued as if they were punja lands. Thus, to elucidate the same, appointment of commissioner to note down the physical features, to count the plots besides the public road available in the above suit items, is very much required. The respondents 1 to 3/plaintiffs filed counter in the commissioner application, stating that at the time of filing of the suit, the suit properties were not converted as house sites and they were remained as punja lands, wherein, agriculture was being carried on and therefore, based on the kist receipts, suit properties have been rightly valued and court fee has been paid accordingly and the present commissioner application filed after 15 years of the filing of the suit is only to protract the proceedings.

6.Perusal of record further shows that the Court below considered the submissions on both sides and holding that the issue as to whether there are house sites, public road in the suit properties can very well be found through the revenue documents and application itself has been filed only to collect



evidence, dismissed the commissioner application relying upon the judgments of this Court in Saraswathy vs. Viswanathan, 2002 (2) CTC 199 and Siaram Nayak vs. Usharani Das, 2003 AIHC 3526, wherein, it has been held that object of appointment of commissioner is not to collect evidence and the Court would not issue commission for the purpose as the Court should not be the means to collect evidence for a particular party. I do not find any infirmity in the order passed by the learned Judge.

7. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

bala

To

The District Munsif,
Kovilpatti.

ORDER MADE IN
CRP(MD)No.559 of 2021
DATED : 25.03.2021

SJ(CO)
TR(08.04.2021) 3P 2C