



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	21.09.2021
DELIVERED ON	01.10.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.942 of 2021

and

C.M.P. (MD) No.5311 of 2021

R.Kanchana

...Petitioner/Respondent/Plaintiff

Vs.

1.P.Rengarajan

2.Kamatchi @ Mookayee

3.Dhanam

4.Saroja

5.Thamilarasi

6.Balakrishnan

...R-1 to R-6/Petitioners 1 to 6/
Defendants 1 to 6

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.3 of 2021 in O.S.No.154 of 2020 on the file of the Subordinate Court, Lalgudi, dated 17.04.2021.

For Petitioner : Mr.C.Vakeeswaran

For Respondents : Mr.S.Rajesh Kanna

ORDER

This Civil Revision Petition has been filed to set aside the order in I.A.No.3 of 2021 in O.S.No.154 of 2020 on the file of the Subordinate Court, Lalgudi, dated 17.04.2021.

2.The revision petitioner herein/plaintiff has filed a suit in O.S.No.154 of 2020 on the file of the Subordinate Court, Lalgudi, for declaration and permanent injunction. During the pendency of the suit, the respondents herein/defendants have filed a petition in I.A.No.3 of 2021 in O.S.No.154 of 2020, for appointment of Advocate Commissioner to measure the properties from South to North from Veeraani East-West Street Point No.3 in S.No.524 of 26 upto the property of the sixth defendant, that the property in S.No.524 of 26 situated on the southern end of the said Survey Number. The learned Subordinate Judge, Lalgudi, has allowed the said I.A.No.3 of 2021, on 17.04.2021 and appointed advocate commissioner to measure the properties. Aggrieved by the said order, the revision petitioner is before this Court.



3. Heard Mr.C.Vakeeswaran, learned counsel appearing for the petitioner and Mr.S.Rajesh Kanna, learned counsel appearing for the respondents. Perused the records.

4. It is seen from the records that the revision petitioner/plaintiff has filed a suit in O.S.No.154 of 2020 for declaration of title and also for permanent injunction. Already, surveyor had inspected the properties and filed his report on 13.02.2020. It was also filed by the plaintiff.

5. The suit properties are located in S.No.524/1. The respondents/ defendants properties are located in S.No.524/26 and not adjacent to the properties of the plaintiff.

6. It is a bounden duty of the plaintiff is to prove that the properties are belonged to him and possessed by him with necessary documents.

7. Further, the respondents/defendants have admitted in commission petition that the surveyor had measured the properties on the basis of FMB. They have also stated that the measurement in FMB is not correct. Without amending the FMB, the respondents herein/defendants cannot ask for appointment of advocate commissioner to measure the properties. Moreover, the 6th respondent herein/6th defendant is only a purchaser.

8. The suit in O.S.No.154 of 2020 was filed for declaration and injunction. The issues in the suit can be decided only on the basis of title deed and on documents for possession.

9. The Subordinate Court erred in allowing the commission petition that to direct the commissioner to measure from the 6th defendant's properties which is no way connected with the suit.

10. In view of the foregoing reasons, this Civil Revision Petition is liable to be allowed.

11. Finally, this Civil Revision Petition is allowed. The order, dated 17.04.2021 in I.A.No.3 of 2021 in O.S.No.154 of 2020 passed by the learned Subordinate Judge, Lalgudi, is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

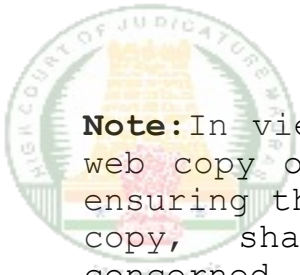
Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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To

The Subordinate Court,
Lalgudi.

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-30974[F] dated
04/10/2021)

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01.10.2021

RD(8.10.2021) 3P 3C