



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1793 of 2021

and

C.M.P. (MD) No.9632 of 2021

M.Murugesan .. Petitioner/Petitioner/1st Defendant

-vs-

P.Rajaraman .. Respondent/Respondent/Plaintiff

Prayer :- Petition filed under Article 227 of the Constitution of India against the order dated 19.07.2018 passed in I.A.No.960 of 2015 in O.S.No.116 of 2015 on the file of learned Additional District Munsif Court, Dindigul.

For Petitioner : Mr.M.P.Senthil

ORDER

The petitioner/1st defendant is before this Court challenging the order dated 19.07.2018 passed by the Additional District Munsif, Dindigul in I.A.No.960 of 2015 in O.S.No.116 of 2015 insofar as under the order, the learned District Munsif had not appointed the VAO and Surveyor to assist the Advocate Commissioner for measuring the properties.

2.In order to appreciate the grounds of revision, a brief prelude to the same has to be narrated herein below.

3.The respondent/plaintiff had filed the above suit for a declaration in respect of his 1/3 share in the well situate in S.No.501/8C, the vacant site around the well and the properties in S.Nos.501/10A and 501/8D and for a permanent injunction restraining the defendants from interfering with the respondent's right to draw water from the well in S.No.501/8C to his lands in S.Nos.501/10A and 501/8D through the lands belonging to the defendants comprised in S.Nos.501/8A, 501/7, 801/6C and 801/6B to the plaintiff's lands in S.Nos.501/6A, 501/5B, 501/4D, 501/3B and 501/2B.



4.The petitioner/1st defendant had filed his counter and thereafter, had come forward with the application in I.A.No.960 of 2015 to appoint an Advocate Commissioner to note down the physical features of the suit property with the help of the VAO and Surveyor and measure the same.

5.In the affidavit filed in support of the application, the petitioner would state that in reality, there is no channel in existence in the petitioner's land to draw water from the well situate in S.No.501/8C to the lands comprised in 501/6A, 501/5B, 501/4D, 501/3B and 501/2B. He had further contended that the plaintiff had not properly described the channel through which water was being drawn by him. He would, therefore, seek to have an Advocate Commissioner appointed to measure the properties comprised in various sub divisions of S.No.501 and submit a report apart from noting the physical features.

6.The learned District Munsif, Dindigul on hearing both the parties, took a view that since the issue was only with reference to the existence of the channel, it would suffice, if an Advocate Commissioner is appointed to note down the physical features and there was no necessity to measure the properties. The learned District Munsif, therefore, had appointed only an Advocate Commissioner. It is this portion of the order, that is, now subject matter of challenge in this revision.

7.The learned counsel for the petitioner would vehemently argue that the measurement of the lands comprised in S.No.501, now subdivided into various sub divisions, is essential to arrive at a solution to the issue involved in the suit.

8.Heard the learned counsel for the petitioner and perused the records.

9.Mere perusal of the relief sought for by the plaintiff/respondent in the suit in O.S.No.116 of 2015 clearly indicates that the plaintiff/respondent was claiming a right to use the channel described in the schedule to the property running through various survey numbers for taking water from the well situate in S.No.501/8C to his lands through the lands of the defendants. The defence is that the channel is not in existence. Therefore, the controversy is whether the channel is in existence or not. This can be identified by the Advocate Commissioner by solely inspecting the properties concerned. There is no necessity to measure the properties, as there is no dispute with regard to the ownership of the lands. In these circumstances, I do not find any infirmity in the order passed by the learned District Munsif,



Dindigul and consequently, the Civil Revision Petition stands dismissed. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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// True Copy //

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Sub Assistant Registrar(CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif, Dindigul.

+1 CC to M/s.M.P. SENTHIL, Advocate
(SR-35295[F] dated 22/11/2021)

C.R.P. (PD) (MD) No.1793 of 2021

Dated: 19.11.2021

MGJ(08.12.2021) 3P 3C