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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .No.2090 of 2019

and

C.M.P. (MD) No.10888 of 2019

1.M.Jeyaraman
2.M.Rengarajan

...Petitioners/Petitioners/Plaintiffs

Vs.

1.The State of Tamil Nadu
through its District Collector,
Thoothukudi, Thoothukudi District.

2.The Tahsildar,
Ettayapuram Taluk,
Ettayapuram, Thoothukudi District.

3.The Executive Officer,
Ettayapuram Town Panchayat,
Ettayapuram, Thoothukudi District.

4.The Block Development Officer,
Kovilpatti, Thoothukudi District.

5.A.Kadar Sultan ...Respondents/Respondents/Respondents

[R1 to R4 notice not necessary as given up]

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 09.09.2019 made in I.A.No.374 of 2019 in O.SNo.105 of 2014 on the file of the District Munsif Court, Kovilpatti and allow the Civil Revision Petition.

For Petitioners	:Mr.R.Devaraj
For R-31 to R-3	:Mr.A.Baskaran
	Government Advocate
For R-4	:Mr.R.Sethuraman
For R-5	:Mr.D.Nallathambi

**O R D E R**

This Civil Revision Petition has been filed to set aside the fair and decreetal order, dated 09.09.2019 in I.A.No.374 of 2019 in O.S.No.105 of 2014 passed by the learned District Munsif, Kovilpatti

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2. Heard on either side. Perused the material documents available on record.

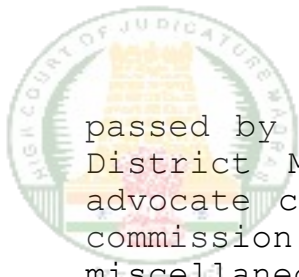
3. The revision petitioners herein/plaintiffs have filed a suit in O.S. No.105 of 2014 on the file of the District Munsif Court, Kovilpatti, against the respondents herein/defendants, for the relief of declaration and mandatory injunction. During the pendency of the suit, the revision petitioners herein/plaintiffs have filed a interlocutory petition in I.A.No.374 of 2019 in O.S.No.105 of 2014, for appointment of advocate commissioner and the same was dismissed on 19.09.2019, on the ground that there is no contradictions regarding the measurement and boundaries of the suit schedule properties.

4. It is seen from the records that the suit in O.S.No.105 of 2014 was filed for declaration of first schedule property and recovery of mandatory injunction for the second schedule of property. The second schedule property is a Thar road in the middle of the first schedule property measuring East West 12 ½ feet North South 1017 feet. The measurement and formation of the road are not at all disputed by both the parties.

5. The revision petitioners/plaintiffs have to prove that the land in which the road was formed is belonged to him. He can very well prove the fact with necessary documents. The respondents herein/defendants have also admitted that the road was formed 20 years back. The road is on the west side of the fifth respondent's property. The respondents herein/plaintiffs have already sold the property to the fifth respondent.

6. Since the measurement and identify of the property are not disputed by both the parties concerned, it is not necessary to appoint the advocate commissioner. The Court below has to decide whether the property in which the road was formed is belonged to the plaintiffs and whether the plaintiffs are entitled to get declaration of the suit property and mandatory possession only on the basis of the documents. Therefore, the learned District Munsif, Kovilpatti, has rightly passed order and dismissed the commission petition. Hence, this Court has no valid reasons to interfere with the order passed by the Court below.

7. In view of the foregoing reasons, this Civil Revision Petition stands dismissed by confirming the fair and decreetal order, dated 09.09.2019 in I.A.No.374 of 2019 in O.S.No.105 of 2014



passed by the learned District Munsif, Kovilpatti. If the learned District Munsif, Kovilpatti, finds necessary for appointment of advocate commissioner, the Court may direct the plaintiffs to file commission petition. No Costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (P&A)

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/ /2021

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 Court,
Kovilpatti.

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-30187[F] dated 24/09/2021)

+1 CC to M/s.R.DEVARAJ, Advocate (SR-30090[F] dated 23/09/2021)

+1 CC to M/s.SPL. GP (SR-30151[F] dated 24/09/2021)

C.R.P. (MD) .No.2090 of 2019
23.09.2021

NSN(CO)
KB(08.10.2021) 3P 5C