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C.R.P (PD) No.1870 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2022

CORAM: **JUSTICE N.SESHASAYEE**

C.R.P (PD) No.1870 of 2021
and C.M.P. No.14591 of 2021

1.Subramanian
2.Thananchezhiyan
3.Ramalingam
4.Thulukkanam
5.Sundaralingam
6.Anbazzhagan

... Petitioners

Vs.

Mrs.Prabhavathi

... Respondent

PRAYER: The Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 12.02.2021 in I.A. No.51 of 2020 in O.S. No.116 of 2019 on the file of I Additional District Munsif, Vriddhachalam.

For Petitioners : Ms.AL.Ganthimathi

For Respondent : Mr.S.Nambirajan

ORDER



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The defendants in O.S. No.116 of 2019 on the file of the learned First Additional District Munsif, Vriddhachalam, Cuddalore District, has now moved this court with this revision challenging an order dismissing their application in I.A. No.51 of 2020, which they have filed for appointment of a commission for local inspection.

2. The respondent/plaintiff has laid the suit for declaration of title, alleging that a block of land was acquired by the State, that it was divided into 56 plots and was allotted to landless poor. According to the defendants/revision petitioners, there were only 55 plots and the alleged 56th plot is only a pathway in the lay out prepared in the said allotment by the Government and to ascertain it, the defendants/revision petitioners herein have approached the trial court for appointing a commission for local inspection and this came to be dismissed on the ground that the defendants have not produced any documentary evidence to sustain their claim.

3. Heard both sides and perused the materials available on record.

4. While the defendants assert that there is no 56th plot, as contended by the



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plaintiff, it is essentially a negative plea and it may not be proved. Without getting into that, this court holds that ultimately the outcome of the suit appears to be a hinge on the allegation about the existence or non-existence of plot No.56, since or whether the plaintiff claims a portion of any pathway as 56th plot, necessarily, a commission has to go and accordingly, this revision is allowed. The order of the I Additional District Munsif, Vriddhachalam dated 12.02.2021 made in I.A. No.51 of 2020 in O.S. No.116 of 2019 is set aside. However, there is no order as to costs. Consequently, the connected miscellaneous petition is closed.

5. The trial court is now directed to appoint an advocate with reasonable standing on the civil side and one who is regular in his appearance before the court, as the Advocate Commissioner, on such remuneration as it may deem appropriate for local inspection, as required. The plaintiff may also use this opportunity to give list of points, which the commissioner may note down. The court may also instruct the commission to note all the aspects, which he considers necessary and may aid in the complete adjudication of the dispute.

21.04.2022

Asr
To
The Additional District Judge, Dharmapuri



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N.SESHASAYEE, J.,

Asr

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