



C.R.P. (PD) .No.3092 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.(PD).No.3092 of 2021

and

C.M.P.No.21739 of 2021

K.R.Ponnusamy

.. Petitioner

Vs.

1.Kuppusamy

2.Kavitha

3.Vijayakumari

4.Chandrasekar

5.Susheela

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 15.12.2021 allowing the application made in I.A.No.24 of 2021 in O.S.No.137 of 2020 on the file of the District Munsif Court, Avinashi.

For Petitioner : Mr.R.Amardeep

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ORDER

WEB COPY The petitioner, who is the plaintiff in O.S.No.137 of 2020 is on Revision challenging the order appointing Commissioner to inspect the suit property along with a qualified Surveyor to measure the same, determine the boundaries and file a report and plan.

2. The suit is one for declaration that the plaintiff's right to use the cart track and for permanent injunction. Other reliefs relating to certain documents have also been sought for in the suit. The dispute in the suit was also subject matter of the Writ Petition before this Court in W.P.No.13697 of 2020, wherein, the petitioner sought for a certiorari to quash the proceedings dated 14.09.2020 and for a direction to the Taluk Assistant Inspector and the Village Administrative Officer to measure the land to execute the order passed by this Court.

3. While disposing of the Writ Petition, this Court took note of the pendency of O.S.No.137 of 2020 and I.A.No..24 of 2021 therein, seeking appointment of Commissioner. This Court also observed that the



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Commissioner's report would be of very great help to the Court to decide the controversy between the parties. The relevant observations of this Court made in its order in W.P.No.13697 of 2020 dated 27.09.2021 are as follows:

14. The private respondents have moved a very detailed application before the district Munsif Court, Avinashi in I.A.No.24 of 2020 in O.S.No.137 of 2020 for appointment of an Advocate Commissioner in order to conduct a survey and measure the subject property with the help of a Surveyor. It is seen from the application that the private respondents have sought for the survey of both S.F.Nos.106/1 and 115/1. The private respondents thought it fit to file such an application since they wanted to identify the property correctly based on the title documents. According to the private respondents, the report of the Advocate Commissioner, after conducting the survey, will have a lot of bearing while deciding the pending suit.

15. In view of the above development, it will be fit and proper to issue appropriate directions



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to the District Munsif, Avinashi to consider the said application. Ultimately, the report submitted by the Advocate Commissioner, after conducting the survey with the help of a Surveyor, will be treated as a piece of evidence, while deciding the suit and the same will be dealt with by the Court below in accordance with law. Once such a survey takes place, it will have more authenticity, since it will be subject to appreciation by a competent Civil Court. That apart, both the parties will have a right to put forth their claims based on the report of the Advocate Commissioner.

4. The trial Court took note of the directions of this Court made in the Writ Petition and appointed Commissioner.

5. Mr.Amardeep, learned counsel appearing for the petitioner would vehemently contend that the trial Court was not right in blindly following the order of this Court while appointing the Commissioner.



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6. I am unable to subscribe to the submission of the counsel for the petitioner. This Court was also concerned with the same dispute in the Writ Petition. The petitioner herein was petitioner in the Writ Petition. This Court accepted the contentions of the respondent and held that appointment of Commissioner and localization of the property would be of great help to the Court to decide the lis between the parties. Even otherwise, considering the very nature of the dispute which is regarding the existence or otherwise of the cart track, the appointment of Commissioner is absolutely necessary to enable the Court to adjudicate the lis between the parties in an effective manner.

7. Hence, I do not see any reason reason to interfere with the order of the trial Court. The Revision therefore fails and it is accordingly **dismissed**. No costs. Consequently, the connected miscellaneous petition is closed.

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Speaking order

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R.SUBRAMANIAN, J.

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To

The District Munsif Court, Avinashi.

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