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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2022

Coram

The Hon'ble Mr. Justice **C.V.KARTHIKEYAN**

C.R.P (PD) No.1854 of 2017

1.P.Malaisamy
2.M.Somasundaram
3.Dhanapal

... Petitioners/Plaintiffs 2 to 5/Petitioners
Vs

1.Venkittammal
2.Muthulakshmi
3.T.S.Sampoornam
4.Ramakrishnan

5.Anthiyur Sunnath Jamath
Rep. by its Muthavalli,
S.P.P. Complex,
Anthiyur,
Anthiyur Taluk,
Erode District.

...Respondents/ Defendants 2 to 6 / Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 02.03.2017 in I.A.No.1478 of 2016 in O.S.No.401 of 2016 on the file of the Principal District Munsif Court, Bhavani.

For Petitioners

..

Mr.L.Mouli

For R1 to R3

..

Ex-parte

For R4

..

Mr.N.Manokaran

For R5

..

Mr.A.Mohamed Ismail

**ORDER****WEB COPY**

The plaintiffs in O.S.No.401 of 2016 which is now pending on the file of the Principal District Munsif Court, Bhavani are the revision petitioners herein. The aforementioned suit was filed for declaration of their title over the suit property and for permanent injunction restraining the defendants from interfering with their possession and also for declaration that a sale deed dated 06.09.2011 registered as Doc. No.2977 of 2011 in the Sub-Registrar Office at Anthiyur was not binding on the plaintiffs and for permanent injunction restraining the defendants from alienating the suit property and also for costs.

2. There was a partition deed on 23.03.1960 and in that particular partition deed there was a B-schedule property measuring 1.87 acres at Anthiyur Village in Bhavani in Erode District. The larger extent of 1.87 acres had been dealt with during course of time and the suit was laid only with respect to 12 cents which formed part of the aforementioned 1.87 acres. The said schedule property of 12 cents is vacant land and it is claimed that it is situated in Town Survey No.1861/8-A. The plaintiffs seek declaration of title over the said 12 cents and also questioned a sale deed dated 06.09.2011.



3. According to the defendants, an earlier suit was filed is O.S.No.105 of 2011 and that was dismissed for default and it is the grievance of the learned counsel for the respondents that the present suit itself would suffer on the issue of res judicata. That is an aspect which can be examined only during the course of trial. It must be pleaded in the written statement and issues must be framed.

4. The scope of the present Civil Revision Petition is quite narrow. In the said suit, the plaintiffs filed an application seeking appointment of an Advocate Commissioner to determine whether the suit schedule property of 12 cents actually lies within the larger area of 1.87 acres which was the B-schedule in the partition deed dated 23.03.1960. The said application came to be dismissed by the Principal District Munsif Court at Bhavani, necessitating the filing of the present Civil Revision Petition.

5. Mr. L. Mouli, learned counsel for the revision petitioners pointed out the sketch of the property which indicated that the 12 cents which is now being disputed, actually lies within the larger area of 1.87 acres B-schedule property as aforementioned in the partition deed. To establish



that particular fact, it was urged that Advocate Commissioner must be appointed to measure first the larger area of B-schedule and then to determine whether the suit schedule property is part of that particular larger area.

6.The learned Principal District Munsif had dismissed the application, holding that evidence must first be adduced and then a decision can be taken with respect to appointment of Advocate Commissioner. I would concur with such decision taken by the learned Principal District Munsif and direct the parties to proceed further with trial.

7.The plaintiffs will necessarily have to establish the lay of the land or the actual area with respect to the B-schedule in the partition deed dated 23.03.1960. Thereafter, the plaintiff must let in evidence with respect to the 12 cents, which is now involved in the suit and that it forms part of the larger area of 1.87 ares. On conclusion of evidence, if the learned Principal District Munsif still entertains doubts or requires clarification on this particular aspect, the provision under Order 26 Rule 9 CPC gives necessary leverage to the Court and the Court may appoint a



Commissioner to determine any fact with respect to lay of the land or the physical features of the particular land, which is disputed before the Court. If the learned Principal District Munsif is to clarify whether the suit property is actually within B-schedule property of the partition deed dated 23.03.1960, then without any hesitation he/she can proceed to exercise that particular power to appoint an Advocate Commissioner to measure the property or identify the property. That exercise can be done at a later stage, but first there must be cogent evidence in that regard. If the plaintiffs' evidence itself is lacking, then the learned Principal District Munsif may take a considered decision. If there is some evidence, then for further clarification, the learned Principal District Munsif can appoint an Advocate Commissioner seeking assistance from the report filed by the said Advocate Commissioner.

8.I would leave it to the wisdom of the learned Principal District Munsif, to decide that particular course of action after recording evidence in entirety. At this stage, dismissing the application is the correct step.



9.I would retain the option for appointment of an Advocate Commissioner on conclusion of recording of evidence. With that particular observation, upholding the order in I.A.No.1478 of 2016 in O.S.No.401 of 2016 dated 02.03.2017 passed by the Principal District Munsif, Bhavani, the present Civil Revision Petition is disposed of and the parties are directed to go back to the trial Court and proceed further with the trial. The learned Principal District Munsif, Bhavani, shall make endeavour to dispose of the suit, on or before 31.12.2022.

02.03.2022

Internet:Yes/No

Index:Yes/No

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To

The Principal District Munsif Court, Bhavani.



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C.V.KARTHIKEYAN,J.

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