



C.R.P. No. 20 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 20 of 2017

and

C.M.P. No. 94 of 2017

**Murugavel,
S/o. Subramanian**

... Petitioner

Versus

**1 Kasthuri
W/o Kannappan**

**2 Rathinavelu
S/o Kannappan**

Meenakshisundaram @ Babu (died)

**4 Senthilmurugan
S/o Kannappan**

**5 M.Vasantha
W/o Meenakshisundaram**

**6 M.Vignesh
S/o Meenakshisundaram**



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7 M.Vinothraj
S/o. Meenakshisundaram

8 Minor M.Vishwa
S/o. Meenakshisundaram
Rep. by Mother And Natural Guardian
M.Vasantha

(R5 to R8 brought on record as LR's of
deceased R-3 viz., Meenakshisundaram
@ Babu vide court order dated 19.10.2022
made in C.M.P. Nos. 15585, 15592 and
15593 of 2022 in C.R.P.No.20/2017)

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the order dated 01.07.2016 made in I.A.No.616 of 2013 in O.S.No.575 of 2008 passed by the learned II Addl. District Munsif, Vridhachalam, Cuddalore Dt.

For Petitioner : Mr.S.Senthilnathan

For Respondents : Mr.V.Ramana Reddy,
for R1, R2 & R4

R3 - died

R5 to R7 – batta due



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ORDER

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The Revision Petitioner herein is the plaintiff in O.S.No. 575 of 2008 on the file of Addl. District Munsif, Vridhachalam and the said suit was filed by him for the relief of declaration and other consequential relief in respect of suit property morefully described in the plaint schedule with regard to 14 ½ ft.

2. The defendants contested the suit by filing their written statement stating that the suit property is not belong to plaintiff and the defendants are having right over the said portion and in order to prove the same, the defendants wanted to appoint an advocate commissioner, more particularly, to note down the physical features along with old wall, which was said to be demolished by the plaintiff while putting up construction. So, they have filed an application in I.A.No. 1753 of 2009 under Order 26 Rule 9 and Sec.151 of C.P.C. praying for appointment of advocate commissioner to visit the property and note down the physical features along with surveyor and to dig up and find the foundation stone. On hearing both sides, the trial judge appointed a Commissioner and at the time of inspection, the defendants

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attempted to restrain the Commissioner from digging up and to find out the foundation stone, but the same was objected by the plaintiff stating that there is no specific order and so, the commissioner surrendered the warrant and the same was dismissed as not pressed. Finally, he filed an application in I.A.No.616 of 2013 under Sec.151 of C.P.C. praying to appoint earlier commissioner to visit the property and to note down physical features with the help of surveyor and also with the help of police, more particularly, to find out the old thaisuvar (தாய்சுவர்) by digging up foundation stone. On hearing both sides, the trial court rightly allowed the application as prayed for. Challenging the said order, the plaintiff preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioner argued that if the Commissioner is appointed to dig the foundation stone, entire property will be collapsed and the defendants have to prove it on their own records and they have no right to collect the evidence in a suit filed by the plaintiff. But, the trial court failed to consider the same.



4. By way of reply, the learned counsel for respondents submitted that in the year of 1992, due to flood, old thaisuvar fell down and taking advantage of the same, the plaintiff put up construction and so, he has no right over the suit property and he has to necessarily prove the said fact through the Commissioner and the same was rightly appreciated by the trial judge, which needs no interference.

5. Heard and considered rival submissions of learned counsel for revision petitioner as well as respondents and perused the records.

6. On considering submissions of both sides and on perusal of records, it reveals that the plaintiff filed a suit for declaration in respect of suit property as described in the plaint schedule. Considering the fact that the suit property is a vacant site, wherein the plaintiff used the same as ingress and egress to reach his property. But, the defendants submitted that on the eastern side of suit property, there was a old Thaisuvar, which belongs to these defendants and the same was fell down due to flood, wherein, the plaintiff put up construction and wrongly claiming ownership over the lane. Hence, another application was filed and the same was rightly allowed by the trial judge. Since the fact is with regard to physical features



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on the ground old thaisuvar fell down due to flood and the same can be proved through Commissioner's report. Hence, the trial court rightly appointed the commissioner, which needs no interference. However, the plaintiff is entitled to file a reply statement to the commissioner's report, but the reason assigned by the trial judge to measure the property and also to find out old Thaisuvar by digging up foundation stone, it will not be done in the entire extent and only in some portion, the Commissioner can dig the foundation stone and find out the same.

7. In the result, this Civil Revision Petition is dismissed as no merits. However, since the suit is pending from the year of 2013, the trial court is directed to proceed with trial and dispose the case within a period of six months from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.11.2022

Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
rpp
To
II Addl. District Munsif,
Vridhachalam.

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T.V.THAMILSELVI, J.

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