



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2022

Coram

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

C.R.P.PD.No.2302 of 2017

and

C.M.P.No.10869 of 2017

C.Senthil

... Petitioner

Vs

1.Madaiyan

2.C.Rukkumaniyammal

3.K.Chinnaipayan

4.C.Palanisamy

5.C.Nallusamy

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 20.12.2016 made in I.A.No.384 of 2016 in O.S.No.108 of 2016 on the file of the District Munsif Cum Judicial Magistrate Court, Omalur.

For Petitioner

..

Mr.A.Esakkiappan

For Respondents

..

Mr.T.Ganesan

**ORDER**

WEB COPY This Civil Revision Petition has been filed taking advantage of Article 227 of the Constitution of India, which gives some leverage to this Court to mould the relief sought and also to expand and widen the scope of the revision petition itself.

2.The 5th defendant in O.S.No.108 of 2016 now pending on the file of the District Munsif cum Judicial Magistrate, Omalur is the revision petitioner herein. As a matter of fact, though he is the 5th defendant, he also effectively represents the 1st to 4th defendants, who, I am informed are his parents and sisters.

3.O.S.No.108 of 2016 has been filed by the 1st respondent / plaintiff for permanent injunction restraining formation of a road. This may not be fully explanatory, but it should be read in conjunction with the fact that the petitioner herein had also filed a similar suit namely, O.S.No.124 of 2016 which is also pending in the very same Court, seeking permanent injunction restraining entries in the revenue records to be made relating to his possession of his property, which property according to the revision petitioner is also included as a road.



4.To establish all these facts, it is only appropriate that the Court seeks the assistance of the Advocate Commissioner to measure not only the property of the plaintiff in O.S.No.108 of 2016, but also the property of the plaintiff in O.S.No.124 of 2016.

5.The Civil Revision Petition has been filed questioning an order passed dated 20.12.2016 in I.A.No.384 of 2016, which application itself had been filed under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner. A similar application has also been filed in O.S.No.124 of 2016. There the 1st respondent herein had not raised any objections. But in IA.No.384 of 2016, the revision petitioner / 5th defendant appears to have raised objections.

6.Raising objections will not be of any advantage to either one of the two parties, since it will only ensure that the suit which is pending for the past five years without any resolution, will be kept pending for another five years. In order to give a quietus to the issues raised with respect to the identification of the properties of the plaintiff and defendants and also identification whether there is road or not, it would only be appropriate that an Advocate Commissioner is actually appointed.

7.Learned counsel for the revision petitioner stated that in



O.S.No.124 of 2016 a similar application had been filed, seeking the Advocate Commissioner himself to measure the property. The Advocate Commissioner may not be an expert in such issues. It would lead to filing of objections and unnecessary protraction of the entire process. In IA No. 384 of 2016, on the other hand, the relief sought was for appointment of an Advocate Commissioner to measure both the properties with the help of surveyor and in the presence of the Village Administrative Officer.

8.I am of the firm opinion that this would be a more practical approach as a surveyor would certainly be aware of the intricacies involved in measuring a property and the Village Administrative Officer would certainly know how to identify the property. The presence of both the officials will not be to the disadvantage of both parties.

9.Therefore, the present Civil Revision Petition is dismissed.

10.I would go with the order passed in I.A.No.384 of 2016 dated 20.12.2016, whereby the learned District Munsif cum Judicial Magistrate, Omalur had appointed a particular counsel as an Advocate Commissioner to measure the said property with the assistance of the qualified surveyor



along with the concerned Village Administrative Officer and that necessary charges are to be paid for measuring of the property with the assistance of surveyor. The plaintiff in O.S.No.108 of 2016 shall pay the necessary charges towards survey fees.

11.In other respects the order of the learned District Munsif cum Judicial Magistrate, Omalur shall prevail and if at all the learned counsel who had been appointed as Advocate Commissioner,, Mr.M.Prakash, is still available, he may be retained as the Advocate Commissioner and if for some circumstances, he is not available, then option is given to the District Munsif cum Judicial Magistrate, Omalur to appoint a fresh Advocate Commissioner to execute the warrant aforementioned.

12.With the above observations, the present Civil Revision Petition is dismissed. No order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

15.02.2022

Internet:Yes/No
Index:Yes/No
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To
The Court of District Munsif cum Judicial Magistrate, Omalur.



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