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C.R.P.(PD).No.2348 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD).No.2348 of 2017

and

C.M.P.No.11067 of 2017

- 1.A.Muthusamy
- 2.Kamala
- 3.Pachamuthu @ Danapal

... Petitioners

vs.

- 1.Semban
- 2.Muthusamy
- 3.Raja @ Marimuthu
- 4.Thangavel
- 5.Settu
- 6.Palanisamy
- 7.Sengodan
- 8.Krishnan
- 9.M.Subramanian

10.The Collector,
Salem, Salem District.

11.The Revenue Divisional Officer,
Mettur, Salem District.

12.The Tahsildar,
Omalur, Salem District.

... Respondents



C.R.P.(PD).No.2348 of 2017

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 09.03.2017 made in I.A.No.593 of 2015 in O.S.No.15 of 2014 on the file of the Sub Court, Mettur.

For Petitioners : Mr.N.Manokaran
For R8 : Ms.Thangavadhana Balakrishnan
For R10 – R12 : Dr.S.Suriya,
Government Advocate

ORDER

The plaintiffs in O.S.No.15 of 2014 on the file of the Sub Court at Mettur, are the revision petitioners herein.

2. The said suit had been jointly tried along with O.S.No.179 of 2013.

3. O.S.No.179 of 2013, had been filed by 8 plaintiffs against 5 private defendants and 6 official defendants, seeking a declaration with respect to the title of the suit property and for a declaration declaring that a document registered on 27.01.1962 as Document No.166 of 1962 on the file of the Sub Registrar Office-I, Omalur, as null and void, and that the 8th defendant, who had obtained mutation of the Revenue Records with respect to the suit property, had done so unlawfully and also for permanent injunction.



4. The First and Second defendants in O.S.No.179 of 2013 along with yet another third party had filed O.S.No.15 of 2014 against the plaintiffs in O.S.No.179 of 2013. They had also retained the official defendants who are the District Collector, Salem, the Revenue Divisional Officer, Mettur and the Tahsildar, Poonamallee.

5. This particular suit had been filed for declaration of title with respect to a Temple called Kallanaiyar Temple and also for a direction, to open the Temple by removing the lock put up in the said Temple and for permanent Injunction.

6. The entire property is situated in Survey No.4/5 at Ammani Singampatti Village, Omalur in Salem District.

7. The plaintiffs in O.S.No 179 of 2013, claim right over a larger area of 42 cents and the plaintiffs in O.S.No.15 of 2014, claim right over a smaller portion of the said 42 cents, which measured 8 ½ cents out of the said 42 cents and where it is claimed the aforementioned Temple is situated. They also claim a right over the said Temple also. They are aggrieved that the Temple is locked.



8. In the said O.S.No.15 of 2014, an application had been filed by the plaintiffs under Order XXVI Rule 9 CPC for appointment of an Advocate Commissioner to identify the Temple and to find out details regarding the said Temple.

9. The said application had been dismissed by order dated 09.03.2017, necessitating filing of the present revision petition.

10. Heard the learned counsel for the revision petitioners and also the learned counsel for the respondents.

11. The learned counsel for the respondents raised a preliminary objection stating that there was earlier direction for appointment of an Advocate Commissioner, and that the revision petitioners/plaintiffs in O.S.No.15 of 2013 are actually trying to obtain an order for the Temple to be opened and that would be prejudice the interest of the plaintiffs in O.S.No.179 of 2013 who are the first-eighth defendants in O.S.No.15 of 2014.

12. The fact that there is a Temple is not in dispute. As a matter of fact, it is also admitted by the plaintiffs that the fact that the Temple is locked is also



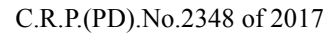
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not in dispute. It is therefore stated by the learned counsel that there is no necessity for appointment of any Advocate Commissioner. It will only be an exercise in futility.

13. The learned counsel for the revision petitioners however state that appointment of an Advocate Commissioner is required primarily to find out the fact about the existence of the Temple and the land over which it is situated.

14. The learned Sub Judge, Mettur, in the course of the impugned order, had stated that, in case there is a doubt with respect to the 4 boundaries or with respect to any of the physical features of the suit property, then, an Advocate Commissioner can be appointed. But, the learned Sub Judge also observed that there was no dispute with respect to either the four boundaries or with respect to the identity of the property or with respect to the physical features.

15. It was therefore held the appointment of an Advocate Commissioner is not required and it is was incumbent on the parties to let in evidence with respect to the lay of the land and the existence or otherwise of the Temple and the locking or otherwise of the Temple.



17. The learned Sub Judge is confident that, on the basis of the evidence he/she can proceed to deliver judgment with respect to the issues raised and issues framed for consideration. If at all, after recording the evidence of the plaintiffs and the defendants, the learned Sub Judge is still of the opinion that some assistance is required, to clarify factual issues, then such assistance can be obtained by appointment of an Advocate Commissioner. Order XXVI Rule 9 CPC gives leverage to appoint an Advocate Commissioner, for such clarification. If such clarifications are not required and evidence adduced by the parties is sufficient then, the learned Sub Judge can proceed to deliver judgment in the suit. If any clarification with respect to the lay of the land vis-a-vis the Temple is required, then, an Advocate Commissioner can be



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appointed and if so appointed, an opportunity must also be granted to both the parties to participate during the course of inspection and to file their objections. If any report is filed, and if further clarifications are required, then the Court can, if required, summon the learned Advocate Commissioner as a witness.

18. These are steps to be taken by exercising judicial discretion by the learned Sub Judge, Mettur. This Court cannot to step into the shoes of the Trial Court and direct the manner in which the trial is to be conducted. I would leave that to the wisdom and privilege of the learned Sub Judge to take a considered decision, after the evidence of both the plaintiffs and the defendants are recorded in entirety and analysed.

19. The Civil Revision Petition stands dismissed. However, the dismissal of the Civil Revision Petition would not preclude, as aforesaid, exercise of discretion by the learned Sub Judge for appointment of an Advocate Commissioner if required, for tendering a just decision in the suit. The learned Sub Judge may proceed further with recording evidence and endeavor to dispose of the suit in the normal course on or before 31.10.2022.



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20. With the said observations, the Civil Revision Petition is dismissed.

Consequently, the connected miscellaneous petition is closed. No costs.

30.03.2022

Index:Yes/No

Speaking Order:Yes/No

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To:

- 1.The Subordinate Judge, Mettur.
- 2.The Section Officer,
V.R.Section, High Court of Madras.
- 3.The Collector,
Salem, Salem District.
- 4.The Revenue Divisional Officer,
Mettur, Salem District.
- 5.The Tahsildar,
Omalur, Salem District.



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C.V.KARTHIKEYAN, J.

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