



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CRP (PD) No. 2543 of 2017

And

C.M.P.No. 12071 of 2017

Seenu @ Ramadass

... Petitioner

Vs

1. S.Palani
2. R.Kannan
3. R.Santhanakrishnan
4. R.Ananthakrishnan
5. R.Natarajan
6. Rajalakshmi @ Rajakumari
7. K.Lalitha
8. S.Senthil Kumar
9. S.Pandian
10. S.Mahendran
11. S.Ramesh
12. P.Ramesh



13. R.Shanmugam

14. R.Paramasivam

15. J.Elangovan

16. J.Gnansekaran

17. S.Mohammed Yahiya

18. K.Vijayakumar

19. Cooperative Society

20. The Commissioner
Parangipettai Village Panchayat
Parangipettai

...Respondents/RR 2 to 18 given up

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the orders passed in I.A.No. 145 of 2017 in O.S.No. 10 of 2016, dated 18.04.2017 on the file of the District munsif Court, Parangippettai.

For Petitioner : Mr. B.V. Sai Lakshmi
for M/s. R.S.Raveendhren

For 1st Respondent: No appearance

For RR 2 to 18 : Given up

For 19th Respondent: Mr.L.P.Shanmuga Sundaram

For 20th Respondent: Mr.D.Gopal
Government Advocate

**ORDER**

WEB COPY

The Civil Revision Petition has been filed by the plaintiff in O.S.No. 10 of 2016 now pending on the file of the District Munsif cum Judicial Magistrate, Parangipettai, aggrieved by the order in I.A.No. 145 of 2017 dated 18.04.2017. The said application was filed under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner. After counter had been filed by the respondents, the said application came to be dismissed necessitating the plaintiff to file the present Revision Petition.

2. O.S.No. 10 of 2016 had been filed by the revision petitioner/plaintiff Seenu @ Ramadass against 20 defendants. The 20th defendant is the Commissioner, Parangipettai Village Panchayat in Bhuvanagiti.

3. The suit had been filed seeking a declaration that there is a charge over the suit property for carrying out charity, which should be carried out, by anybody who is in possession and enjoyment of the properties and for a declaration that the plaintiff, as a legal heir of Rama Padayachi is actually in possession and enjoyment of the suit property and

in the alternate for a declaration that a decree passed in O.S.No. 927 of



1995, is not binding on the legal heirs of Rama Padayachi including the plaintiff and the defendant is not entitled for possession of the suit property and injunction seeking protection of the possession of the plaintiff and for costs.

4. The entire issue arises with respect to the suit property which had been described in the plaint as vacant land measuring 4.17 acres in R.S.No. 98/3A, B.Mutlur Village, Bhuvanagiri Taluk. It is stated that the forefathers of the plaintiffs have been carrying on a charity in the suit property in accordance with a partition of the year 1934. The plaintiff claims that he is in possession and enjoyment of the suit property and is doing the charity for which there is a charge over the said property. He claims that he had been doing the charity for the past 20 years. He also claims that the said charity was created by a Judgment by this Court in S.A.No. 1166 of 1991 and in S.A.No. 897 of 1998. The plaintiff was not a party in an earlier suit in O.S.No. 927 of 1995. He filed this suit for a declaration that the Judgment and decree in the said suit is not binding on him.



5. A written statement filed joining issue with the plaintiff by the first defendant.

6. The plaintiff had then filed I.A.No. 145 of 2017 seeking appointment of an Advocate Commissioner.

7. In the affidavit filed in support of the said application, among various other aspects, the plaintiff had also stated that the Advocate Commissioner would be required to determine possession of the suit property and also to note down the physical features of the suit property. It must be noted that the particular land had been donated by the grandfather of the plaintiff to the Revenue Department and they have also put that to use by putting up a fair price shop. There are also tenants and there is also temple in the said place.

8. This application came up for consideration before the District Munsif cum Judicial Magistrate, Parangipettai on 18.04.2017 and it was held that an Advocate Commissioner cannot be appointed to determine possession of a particular area of land and that would amount to gathering of evidence and that the said fact must be established only by the plaintiff



and the said application was dismissed. Questioning that order, the plaintiff is in revision before this Court.

9. The learned counsel for the revision petitioner however insisted that though in the affidavit, it had been stated that possession of the land is central issue, the main reason advanced by the appellant for appointment of an Advocate Commissioner was to note down the physical features and for that particular purpose, it was necessitated that an Advocate Commissioner had to be appointed.

10. During the course of discussion, doubts were raised over the layout of the land particularly, since it had been gifted by the grandfather of the plaintiff to the revenue authorities for their utilisation and there were also tenants in the said land. It was also observed that a charge had been created over the land by Judgments of this Court in two Second Appeals for the purpose to perform the charities as directed in the partition deed of the year 1934. This Court therefore sought a report regarding the layout of the land.



11. Assistance was sought from the Block Development Officer/ Commissioner at that particular area but since no effective assistance was afforded, a direction was given that the Block Development Officer should be present in this Court. Accordingly, Mr.K.Sivagnana Sundaram, Commissioner / Block Development Officer of Parangipettai in Bhuvanagiri, Cuddalore District is present in Court. He had filed a memo which is also counter signed by the learned counsel for the 20th defendant wherein he had given in detail, the particulars of the land and the various constructions available in the said land and the nature of the construction. A rough sketch had also been given and both the memo and the rough sketch are retained as part of the records of this Court.

12. Notice had been directed to the respondents but though notice had been served, there is no representations, let me not hold over from passing orders in the Revision Petition and it would only be advantageous to both the plaintiff and the defendants if trial in O.S.No. 10 of 2016 commences and proceeds further.

13. In view of the above observations, the following directions are issued:-



WEB COPY (i) The order under revision in I.A.No.145 of 2017 in O.S.No. 10 of 2016 dated 18.04.2017 is not interfered with. An Advocate Commissioner need not be appointed at this particular stage.

(ii) Let the issues be framed in the suit if pleadings are completed.

(iii) let the evidence of parties be adduced.

(iv) If required to further clarify the lay of the land or the physical features of the land, summons can be issued to the Revenue Officials to produce the revenue records relating to the suit land and the District Munsif cum Judicial Magistrate, Parangipettai, can place reliance on those documents and on such evidence and proceed further to adjudicate the issues in the suit; and

(v) If after recording of evidence and after, examining any official witness in the manner aforesaid application filed either the plaintiff or the defendants, the District Munsif cum Judicial Magistrate, Parangipettai, still requires clarifications regarding the physical features, then there would be no impediment on the said District Munsif cum Judicial Magistrate, Parangipettai, taking recourse to Order 26 Rule 9 CPC and the



Court can appoint an Advocate Commissioner and issue a warrant in accordance with the clarifications required.

(vi). If such an Advocate Commissioner is appointed, a direction is issued that the said Advocate Commissioner has to inspect the property in the presence of the plaintiff and the defendants in the suit and both parties should also be afforded opportunity to give their notes for inspection and also if required file objections to any report or sketch filed by the Advocate Commissioner. If further required, either the plaintiff or the defendants may also issue summons to the Advocate Commissioner to examine him on the aspects of the report / sketch if at all Advocate Commissioner is appointed and if at all he files such report or sketch.

14. The learned counsel stated that the order of the District Munsif cum Judicial Magistrate, Parangipettai dismissing I.A.No. 145 of 2017 should not come in the way of the very same Officer appointing an Advocate Commissioner. If the District Munsif is of the opinion that to meet the ends of justice and in the interest of parties, an Advocate Commissioner is required then necessary steps can be taken in manner known to law.



WEB COPY



C.V.KARTHIKEYAN, J.

Vsg

15. The Civil Revision Petition stands disposed of with the above direction. Let the trial commence in the suit and proceed in manner known to law. No order as to costs. Connected C.M.P., is closed.

06.04.2022

vsg

Index: Yes/No

Speaking order / Non speaking order

To:

1. District Munsif Court, Parangipettai.

2. The Section Officer,
VR Section,
Madras High Court, Chennai.

CRP (PD) No. 2543 of 2017

And

C.M.P.No. 12071 of 2017