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C.R.P. No. 3009 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 3009 of 2017

P.L.Ramesh,
S/o. P.V.Logaiah

... Petitioner

Versus

1. Christhavaraj
S/o. Thulukkanam

2. Rani
W/o. Kotharakkai

3. Maniammal
W/o. Kabali

4. Rettamerry
W/o. Perumal

5. Arul
S/o.kosavan

6. Theniammal
W/o. Subramani

7. Munusamy
S/o. Susai

8. Lingavelu
S/o. Ramakrishnan

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9. Pathinadhan
S/o. Durai Samy

10. Vijaya
W/o. Sundaram

11. Muthu
S/o. Raphel

... Respondents

PRAYER : Civil Revision Petition filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 06.07.2017 made in I.A.No.86 of 2017 in O.S. No. 30 of 2013 on the file of learned District Munsif cum Judicial Magistrate, Uthiramerur.

For Petitioner : Mr.J.Antony Jesuraja

For Respondents : No appearance

ORDER

The Revision Petitioner herein is the plaintiff in the suit in O.S.No.30 of 2013 filed against the defendants for the relief of permanent injunction and not to disturb peaceful possession in the suit property of Grama natham land in Old Survey No. 45, New Survey No.45/6 with an extent of 60 cents with four boundaries.

2. The defendants contested the suit. During the pendency of suit proceedings, the defendants filed an application in I.A.No. 86 of 2017 to



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appoint an advocate commissioner to note down the physical features and measure the suit property with the help of Surveyor stating that the suit property is situated in grama natham, in which, the said Sulochanammal is not entitled for 60 cents as claimed in the plaint and they are entitled to only 3 cents in the grama natham land, but they are claiming more extent. Furthermore, with regard to Survey No.45, it was included in sale deed by hand writing and how the property in Survey No.45 belong to plaintiff's family and the cause of action was also not properly shown in the plaint. However, to prove their possession, they are residing in the property by putting up a hut in a portion of the property. Hence, they have filed an application to appoint an advocate commissioner to note down the physical features and to establish their title and to measure the property in order to prove all the above facts. Considering both side submissions, the trial court rightly appreciated the facts and allowed the application concluding that the report of Commissioner would elucidate the matter in dispute and no prejudice would be caused to the plaintiff. Challenging the said findings, the plaintiff filed the present Civil Revision Petition.



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3. The learned counsel for Revision Petitioner submitted that the defendants are not entitled to file the said application to appoint an advocate commissioner and only to collect evidence, they have filed the said application. To support his contentions, he relied on the authority held by ***High Court of Orissa*** in the case of ***Regional Cooperative Marketing Society and another vs. Amarnath Saraph*** reported in ***2019 SCC Online Ori 172*** and another authority held by ***High Court of Himachal Pradesh*** reported in ***2019 SCC Online HP 1034 : AIR 2019 HP 173*** in the case of ***Naseeb Deen and another vs. Harnek Singh***.

4. Despite service of notice, there is no representation on the side of respondents herein. On perusal of records, it reveals that 60 cents of grama natham land in Mambakkam Village in Old Survey No.45, New Survey No.45/6, the plaintiff claiming that he is owner of property as per the gift deed executed by Sulochanammal. But, the defendants denying the alleged title deed of Sulochanammal contending that the plaintiff's predecessor not entitled more than 3 cents as per the Government Rules, but they are claiming more extent and the respondents also residing in the suit property. Hence, they wanted to note down the physical features and to adjudicate the



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dispute fairly, they have filed the application to appoint an advocate commissioner. The Trial Court has rightly allowed the application, which needs no interference. Further, the authorities relied on by the Revision Petitioner are not applicable to the facts of the present case. However, on seeing the facts, the Government is also necessary party to decide the issue between the parties. Hence, the plaintiff is directed to implead the Government and the revenue authority as necessary parties to decide the dispute among the parties and to adjudicate the issue fairly. Accordingly, this Civil Revision Petition is dismissed and the order passed by the learned trial judge in I.A.No. 86 of 2017 is confirmed. Since the suit is pending from the year of 2013, the trial court is directed to dispose the case within a period of six months from the date of receipt of copy of this order. No costs.

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Index : Yes/No
Internet: Yes/No
Speaking/Non Speaking order
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To

District Munsif cum Judicial
Magistrate, Uthiramerur.

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T.V.THAMILSELVI, J.

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