



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.1506 of 2019

and

CMP (MD) No.7953 of 2019

- 1.Arulmighu Umaiyammal Thirukoil
Rep. by and on behalf of Viswakarma
Community People at Virusampatti and
Soorangudi Village, Vilathikulam Taluk,
Tuticorin District,
Rep. by its Hereditary Trustee
L.K.Pitchaimani Asari
- 2.K.Villayutham : Petitioners/Petitioners/Plaintiffs
- Vs.
- 1.Anand Prakash Nadar
2.Paldurai
3.Amala Jothi Victoria
4.Francis Victoria : Respondents/Respondents/Defendants

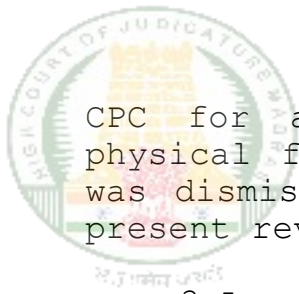
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records of the fair and decreetal order dated 24.07.2019 made in I.A.No.92 of 2017 in O.S.No.46 of 2013 on the file of the Sub Court, Kovilpatti and set aside the same.

For Petitioners : Ms.P.Jessi Jeeva Priya
For Respondents : Mr.R.Devaraj for R.1
No appearance for R.2 to R.4

ORDER

This civil revision petition is filed as against the fair and decreetal order passed by the learned Subordinate Judge, Kovilpatti, in I.A.No.92 of 2017 in O.S.No.46 of 2013, dated 24.07.2019.

2.The petitioners have filed the suit for declaration and injunction with regard to the property situated in S.No.213/1B. The respondent / defendants have also filed their written statement. After the examination of the petitioners / plaintiffs, the petitioners have taken out this application under Order 26 Rule 9



CPC for appointing an Advocate Commissioner to note down the physical features of the suit schedule property. This application was dismissed by the trial Court and aggrieved over the same, the present revision petition came to be filed by the petitioners.

3.Learned Counsel for the petitioners submitted that the Temple has filed the suit that the temple properties have been encroached by the defendants. The suit schedule property in S.No.213/1B was subdivided as S.No.213/1B2A and 213/1B2B. Without knowing this sub division, they have mentioned the suit schedule property in the plaint as S.No.213/1B. However, they have mentioned the boundaries of the suit schedule property in the plaint. To identify the properties based on the boundaries and to find out the physical features, they have taken out this application, however, the trial Court has dismissed the same that no sufficient reasons have been provided by the petitioners.

4.Learned Counsel for the respondents submitted that the suit was filed by the petitioners for the relief in respect of S.No.213/1B and now, this application is filed to find out the physical features in S.No.213/1B2A, which is not the suit schedule property and there is no pleading to the effect that there is a necessity for measuring this land. If the petitioners are taking a plea that the property has been subdivided, they ought to have taken necessary application to amend the plaint. In the absence of any amendment application and without any materials, the petitioners have taken out this application for appointment of an Advocate Commissioner and therefore, it was rightly rejected by the trial Court.

5.Heard the learned Counsel appearing for the respective parties and perused the available materials.

6.The suit is with regard to the property in S.No.213/1B. However, the petitioners have taken out this application to measure the land in S.No.213/1B2A that the property in S.No.213/1B has been subdivided. It appears that the petitioners have not stated any reasons for appointing an Advocate Commissioner and as rightly pointed out by the respondents' Counsel, the petitioners have not taken any steps to amend the plaint schedule property.

7.Under such circumstances, this Court is of the opinion that appointment of Advocate Commissioner to a property which is not the suit schedule property cannot be made and as such, the trial Court has rightly rejected the same. Therefore, this Court is not inclined to interfere with the impugned order and this civil revision petition is accordingly dismissed. The petitioners are at liberty to file necessary application for amending the plaint and thereafter, for appointment of Advocate Commissioner, if they are so advised. If any such application is filed, the trial Court shall endeavor to dispose the same within a period of six weeks from the date of



filing. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

WEB COPY

// True Copy //

Sd/-

Assistant Registrar (CS-III)

/07/2022

Sub Assistant Registrar(CS)

gk

To

The Subordinate Judge,
Kovilpatti.

COPY TO:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.R.DEVARAJ, Advocate (SR-28364[F] dated 28/06/2022)

+1 CC to M/s.P. JESSI JEEVA PRIYA, Advocate (SR-28424[F]
dated 28/06/2022)

**CRP (MD) No.1506 of 2019
27.06.2022**

NSN (CO)

GC (06.07.2022) 3P 6C