



C.R.P (MD) Nos.1862 and 2519 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21.06.2022

CORAM:

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

**C.R.P (MD) Nos.1862 and 2519 of 2017
and**

C.M.P (MD) Nos.9742 and 11817 of 2017

CRP (MD) No.1862 of 2017

Marimuthu

... Petitioner

Vs

1.Dhanu Thevar

2.Vijayan

3.Arunachalam

4.Murugan

5.Nagalapuram Villlage Panchayat Primary School
Through the Commissioner of Panchayat Union,
Kayathar, Kovilpatti Taluk,
Tuticorin District.

6.The District Elementary Education Officer,
T.R.Naidu Street, Tuticorin -1,
Tuticorin District.

7.Gothandaraman

8.Ayyammal

9.Veyilatchi

10.Kilikkoodu

11.Chellathai



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12.Vellathai

13.Lakshmi

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1147 of 2013 in O.S.No.253 of 2013 dated 19.09.2017 on the file of the District Munsif Court, Kovilpatti.

For Petitioner : Mr.H.Arumugam
For Respondent : Mr.R.J.Karthick
Nos.1 to 3
For Respondent : dispensed with
Nos.4 to 13

CRP(MD)No.2519 of 2017

Vijayan

... Petitioner

Vs

Marimuthu

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 20.02.2017 passed in I.A.No.670 of 2016 in O.S.No.03 of 2012 on the file of the District Munsif Court, Kovilpatti.

For Petitioner : Mr.R.J.Karthick
For Respondent : Mr.H.Arumugam



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ORDER

There are two Civil Revision Petitions. CRP(MD)No.1862 of 2017 is filed as against the fair and decreetal order dated 19.09.2017 passed in I.A.1147 of 2013 in O.S.No.253 of 2013. CRP(MD)No.2519 of 2017 is filed as against the fair and decreetal order dated 20.02.2017 passed in I.A.No.670 of 2016 in O.S.No.03 of 2012 on the file of the District Munsif Court, Kovilpatti.

2.The petitioner in CRP(MD)No.1862 of 2017 Marimuthu is the plaintiff in O.S.No.3 of 2012. He filed the suit for declaration and permanent injunction with regard to the property in S.No.195/2 as against the defendant / the petitioner in CRP(MD)No.2519 of 2017, namely, Vijayan. He has filed an application in that suit for appointment of Advocate Commissioner in I.A.No.133 of 2012 and it was allowed. However it was challenged before this Court in CRP(MD)No.2210 of 2012 and this Court by order dated 16.10.2012 allowed the revision petition directing the defendant to file a separate suit for his cause of action. Hence suit in O.S.No.253 of 2017 was filed by Vijayan.



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3.Since the issue in both these civil revision petitions is interconnected, both these petitions are disposed of by way of this common order.

4.Survey No.195/2 is the subject property in both suits. Vijayan has filed two interlocutory applications. First application in I.A.No.1147 of 2013 is filed for appointment of Advocate Commissioner in O.S.No.253 of 2013 and the second application in I.A.No.670 of 2016 in O.S.No.3 of 2012 is filed for joint trial of both suits in O.S.No.3 of 2012 and O.S.No.253 of 2013. The application for appointment of Advocate Commissioner was allowed and the application for joint trial was dismissed.

5.As against the order of appointment of Advocate Commissioner, Marimuthu has filed CRP(MD)No.1862 of 2017 and as against the dismissal order for joint trial Vijayan has filed CRP(MD)No.2519 of 2017.

6.The grievance of Marimuthu/ petitioner in CRP(MD)No.1862 of 2017 is that this civil revision petition cannot be maintained since earlier the request of the



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second respondent for appointment of Advocate Commissioner with regard to the same property in Survey No.195/2 in I.A.No.133 of 2012 was rejected by this Court in CRP(MD)No.2210 of 2012. While so the application cannot be maintained by filing another suit in O.S.No.253 of 2013.

7.The learned Counsel for the respondents in CRP(MD)No.1862 of 2017 submits that on the very same subject property, this respondent Vijayan had taken out an application in I.A.No.133 of 2012 for appointment of Advocate Commissioner in the suit in O.S.No.3 of 2013 and the same was allowed by the trial Court. However this Court set aside the order of appointment of Advocate Commissioner in CRP(MD)No.2210 of 2012 with liberty to file a separate suit for his cause of action. Accordingly, a suit was filed and in that suit only this application for appointment of Advocate Commissioner was filed. Therefore, the request of for Appointment of Advocate Commissioner has to be considered.

8.Heard the learned Counsel on either side and perused the materials placed on record.



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9.Marimuthu - the petitioner in CRP(MD)No.1862 of 2017 has filed a suit in O.S.No.3 of 2012 as against Vijayan - the petitioner in CRP(MD)No.2519 of 2017 with regard to the property in Survey No.195/2, wherein, the defendant Vijayan took out an application for appointment of Advocate Commissioner, which was allowed by the trial Court.

10.This Court by order dated 06.10.2012 has allowed CRP(MD)No.2210 of 2012 filed by Marimuthu that it is for the defendant to establish the encroachments in his property by initiating a separate proceedings with proper cause of action and by observing so, this Court has set aside the order of appointment of Advocate Commissioner in O.S.No.3 of 2012. In pursuance of this order, another suit in O.S.No.253 was filed by the defendant Vijayan and he has also taken out two applications. I.A.No.1147 of 2013 in O.S.No.253 of 2013 is filed for appointment of Advocate Commissioner and I.A.No.670 of 2016 in O.S.No.03 of 2012 is filed for joint trial of both suits in O.S.No.3 of 2012 and O.S.No.253 of 2013. The application for appointment of Advocate Commissioner was allowed and the application for joint trial was dismissed.



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11.The grievance of the petitioner Marimuthu is that the application for appointment of Advocate Commissioner is filed with extended scope of seeking the Advocate Commissioner to find out whether the property is Natham poramboke or punja land and the trial Court has also allowed the application. In the application for appointment of Advocate Commissioner, such a relief cannot be granted. Therefore, this Court modifies the order dated 19.09.2017 passed in I.A.No.1147 of 2013 that the Advocate Commissioner shall measure the properties alone and file a report.

12.Insofar as the rejection of the request for joint trial in I.A.No.670 of 2016 in O.S.No.203 of 2012 is concerned, since both suits are filed with regard to survey No.195/2, this Court modifies the order and directs the trial Court to conduct a joint trial for O.S.Nos.3 of 2012 and 253 of 2013.



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13. In the result, these civil revisions petitions are partly allowed. No costs. Consequently, connected miscellaneous petitions stand closed.

21.06.2022

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To

The District Munsif Court,
Kovilpatti.



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B.PUGALENDHI, J.

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