



C.M.A.No.3504 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

C O R A M

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.3504 of 2013
and M.P.No.1 of 2013

1.Mahamuni
2.Thangaraj
3.Dhandapani

... Appellants/Respondents 1 to 3
/Plaintiffs

Vs

1.Markandan

2.The Tahsildar,
Paramathy Velur Taluk at
Padamudipalayam, Velur Post,
Paramathy Velur Taluk,
Namakkal District.

1st Respondent/Appellant
/1st Defendant

3.The Revenue Inspector,
Jedarpalayam, at Jadapalayam Post,
Paramathy Velur Taluk,
Namakkal District.

... Respondents 2 & 3/Respondents 4 & 5
/Defendants 2 & 3



C.M.A.No.3504 of 2013

PRAYER: Civil Miscellaneous Appeal filed under Oder XLIII Rule 1 of the Civil Procedure Code, 1908 against the Judgment and decree passed in A.S.No.60 of 2012 on the file of the Sub-Court at Namakkal dated 30.07.2013 by remanding the matter to trial court and setting aside the well considered judgment and decree in O.S.No.157 of 2006 dated 29.06.2010 on the file of the District Munsif cum Judicial Magistrate, Paramathy.

For Appellant ... M/s.MA.P.Thangavel

For Respondents ... Mr.P.Valliappan, Senior Counsel
M/s.SMS.Shri Ramnarayanan for R1

... Mr.Dr.S.Suriya, Addl. Govt. Pleader (CS)
for R2 & R3.

J U D G M E N T

Challenging the impugned decree dated 30.07.2013 passed by the Sub-Court, Namakkal in A.S.No.60 of 2012, the appellants have filed the present appeal.

2. It is the case of the appellants that they are the plaintiffs before the Trial court in O.S.No.157 of 2006 which was filed seeking for declaration and



C.M.A.No.3504 of 2013

mandatory injunction against the 1st Respondent to restrain him from interfering with the common lane in Survey No.384/4. The suit was decreed in favour of the appellants. Aggrieved by which, the 1st Respondent preferred an appeal before the appellate court in A.S.No.60 of 2012, which was allowed and the matter was remanded back to the lower court for appointment of Advocate Commissioner. Against which, the present appeal has been filed by the appellants.

3. Learned counsel appearing for the Appellants would submit that as per Section 96 of the Civil Procedure Code, the power that is available to the lower appellate court with regard to receipt of documents and appointment of advocate commissioner, the same power is available to the appellate court and the appellate court can enquire into the witnesses and examine the documents. However, without exercising the powers under Section 96 of Civil Procedure Code, the trial court had remanded the matter back to the lower court which is not sustainable. Hence, this Court may direct the lower court to appoint the Advocate Commissioner to measure the property in S.No.384/4 with the help



C.M.A.No.3504 of 2013

of town surveyor along with relevant records and the cost of which may be shared among the appellants and the 1st Respondent.

4. Learned counsel for the respondents have no serious objection to the said order being passed.

5. In view of the consent expressed by the learned counsel appearing for the appellants as well as the respondents, this Court is inclined to set aside the order passed in A.S.No.60 of 2012. Accordingly, the impugned order dated 30.07.2013 is set aside and the matter is remanded back to the lower appellate court. The lower appellate court is directed to appoint the advocate commissioner and there shall be a direction to the Advocate Commissioner to measure the property in Survey No.384/4 with the help of the town surveyor in the presence of both parties. Further, after receipt of the Advocate Commissioner report, the lower appellate court is directed to dispose of the Appeal in A.S.No.60 of 2012 within a period of twelve weeks from the date of receipt of a copy of this order after affording an opportunity to to the appellants as well as the respondents and the aggrieved persons, if any in order



C.M.A.No.3504 of 2013

to ascertain the extent of both the lands as wells as the pathway in
S.Nos.384/3, 384/5 & 384/4.

6. Accordingly, the Civil Miscellaneous Appeal is allowed in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

31.10.2023

Index : Yes / No
Speaking Order / Non-speaking order
Neutral Citation Case : Yes / No

NHS
To

1.The Sub-Court,
Namakkal

2.The Tahsildar,
Paramathy Velur Taluk at
Padamudipalayam, Velur Post,
Paramathy Velur Taluk,
Namakkal District.

3.The Revenue Inspector,
Jedarpalay



C.M.A.No.3504 of 2013

4.The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.3504 of 2013

M.DHANDAPANI, J

NHS

C.M.A.No.3504 of 2013
and M.P.No.1 of 2013

31.10.2023