



C.R.P.No.1823 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

C.R.P.No.1823 of 2019
and C.M.P.No.11994 of 2019

Angammal (Died)

Chinnappan

... Petitioners

Vs.

1.Murugaiyan

2.Sritharan

3.Subramaniyam

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif Court at Paramathy, dated 10.04.2018 in I.A.No.266 of 2018 in I.A.No.56 of 2012 in O.S.No.11 of 2012.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.M.Saravana Kumar



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ORDER

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This Civil Revision Petition has been filed challenging the fair and decreetal order passed by the District Munsif, Paramathy in I.A.No.266 of 2018 in I.A.No.56 of 2012 in O.S.No.11 of 2012, dated 10.04.2018, wherein, the petition filed by the petitioner/plaintiff to reopen I.A.No.56 of 2012 filed for appointment of an Advocate Commissioner and to note down the physical features and to file a report and a plan, was dismissed.

2.The petitioner is the plaintiff in the suit and the suit was filed seeking for the pathway right and for a permanent injunction restraining the defendants from interfering with the right of usage of the pathway by the plaintiff and for other consequential reliefs. Pending the suit, I.A.No.56 of 2012 was filed by the petitioner for appointment of an Advocate Commissioner to note down the physical features and to file a report and a plan. This application was allowed and an Advocate Commissioner was appointed. By the time, the report was filed by the Commissioner, unfortunately, the Advocate Commissioner died. Hence, another Advocate Commissioner was appointed by the Court below and since the petitioner did not take any steps to get the inspection done by the Advocate Commissioner,



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the application filed in I.A.No.56 of 2012 was closed on 06.12.2017. Hence, the petitioner filed I.A.No.266 of 2018 to reopen I.A.No.56 of 2012. This application was dismissed by the Court below mainly on the ground that the execution of the commission warrant has been pending for a considerably long period of time and hence, the Court below did not find any reason to reopen the application that was closed on 06.12.2017. Aggrieved by the same, the present Civil Revision Petition has been filed before this Court.

3.Heard Mr.P.Valliappan, learned counsel appearing on behalf of the petitioner and Mr.M.Saravana Kumar, learned counsel appearing on behalf of the respondents.

4.In the considered view of this Court, the issue involved in the present case pertains to a pathway right. Hence, proper understanding of the physical features of the suit property will help the Court below in properly identifying the property and deciding the rights claimed by the respective parties. That is the reason why an Advocate Commissioner was appointed by the Court below and unfortunately by the time the report was filed, the Advocate Commissioner died. The second



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Advocate Commissioner was appointed and the petitioner was not able to accompany the Advocate Commissioner, since his mother died.

5.The Court below should have considered fixing a time limit for completion of the inspection of the property by the Advocate Commissioner. Instead, the Court below took into consideration the pendency of the application for a long time. Ultimately, before the Court comes to a final conclusion, the Court has to have a proper understanding on the physical features of the property and only thereafter, the relief as sought for by the petitioner can be considered.

6.It is brought to the notice of this Court that the case is only at the stage of examination of PW1 and PW1 has been examined in chief and documents have been marked on 14.07.2022.

7.In the light of the above discussion, this Court is inclined to give one last opportunity to the petitioner to get the inspection of the property done by the Advocate Commissioner. In view of the same, the fair and decreetal order passed by the Court below in I.A.No.56 of 2018, dated 10.04.2018 is hereby set aside.



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The Court below is directed to restore I.A.No.56 of 2018 and the Advocate Commissioner can be directed to complete the inspection and to file a report along with the plan, within a time limit fixed by the Court below. If the petitioner does not co-operate for the inspection of the property, within the time limit fixed by the Court, it is left open to the Court below to close I.A.No.56 of 2018 and proceed further to deal with the suit on its own merits and in accordance with law. In any event, the Court below shall complete the proceedings in O.S.No.11 of 2012, within a period of six months from the date of receipt of a copy of this order.

8.In the result, this Civil Revision Petition stands allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

11.01.2023

Internet : Yes / No
Index : Yes / No
Speaking Order / Non Speaking Order
Neutral Citation Case : Yes / No
ssr

To

The District Munsif Court,
Paramathy.



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N. ANAND VENKATESH, J.

SSR

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