



C.R.P. No.3242 of 2019
and C.M.P. No.21117 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2023

CORAM: JUSTICE N.SESHASAYEE

C.R.P. No.3242 of 2019 and
C.M.P. No.21117 of 2019

Mannar

... Petitioner

Vs.

Seethapathi (Died)

1.Sekar

2.Kumar

3.Saravanan

4.Mrs.Palaniammal

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 02.08.2019 passed in I.A. No.226 of 2019 in O.S. No.165 of 2015 on the file of the Principal District Munsif, Thirukovilur, Villupuram District.

For Petitioner : Mr.L.Palanimuthu

For Respondents : Mr.J.Agni Selvaraju for R1 and R3
No Appearance for R2 and R4



WEB COPY



*C.R.P. No.3242 of 2019
and C.M.P. No.21117 of 2019*

ORDER

The petitioner is the plaintiff in O.S. No.165 of 2015 on the file of the Principal District Munsif, Thirukovilur, Villupuram District, for declaration of his title, based on a sale deed dated 16.03.1995 executed by the first defendant Seethapathi. He would plead that while the re-survey of the property is 39/5A, in the sale deed, it was wrongly given as R.S. No.57/2. He would further allege that when he approached the defendants, they maintained silence over it. In the meantime, the first defendant has passed away and his son, the second defendant has filed his written statement challenging even the very sale deed executed by the first defendant in favour of the plaintiff.

2. It is in this back drop he has taken out an application in I.A. No.226 of 2019 to survey and identify the suit property. This was dismissed vide the impugned order of the trial court dated 02.08.2019. Its line of reasoning is that the plaintiff has ventured to file the application for appointing a Commissioner only to collect evidence.



C.R.P. No.3242 of 2019
and C.M.P. No.21117 of 2019

3. Heard both sides and perused the materials available in the form of typed set of papers.

4. It is very evident from the pleadings before the court that the plaintiff has alleged that the re-survey number given in the sale deed executed by the first defendant in his favour was wrong. Survey number is one of the modes of identifying the property. But in a given case, it need not be conclusive. The discrepancies between survey number, extent, boundaries, etc. are not uncommon in a civil court. In fitness of things the trial court ought to have appointed a Commissioner. It is imperative for the court to ascertain, if the allegation made by the plaintiff in his pleadings is true or not.

5. Accordingly, this court allows the revision and directs the trial court to appoint any Advocate with practice on the civil side and who is regular in his appearance before the court as the Commissioner for identifying plaintiff's property in terms of the boundaries and the extent thereof and them to ascertain the survey number within which it falls. The Commissioner to be appointed shall have the assistance of an official surveyor and the trial court is required to pass appropriate orders with regard to the same. The remuneration for the



C.R.P. No.3242 of 2019
and C.M.P. No.21117 of 2019

Commissioner is required to be fixed by the trial court. Since the suit has entered its 8th year of institution, this court requires the trial court to show some urgency in disposing of the suit itself. No costs. Consequently, the connected civil miscellaneous petition is closed.

15.03.2023

Asr

To
The Principal District Munsif, Thirukkivilur



WEB COPY



C.R.P. No.3242 of 2019
and C.M.P. No.21117 of 2019

N.SESHASAYEE, J.,

Asr

C.R.P. No.3242 of 2019 and
C.M.P. No.21117 of 2019

15.03.2023