



C.R.P.(PD)No.3236 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.3236 of 2017
and C.M.P.No.15157 of 2017

1. Nasi
2. R.Ramachandran .. Petitioners

Vs.

1. S.Lakshmikanthan
2. Sakthikumar .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 22.12.2016 made in I.A.No.1108 of 2016 in O.S.No.132 of 2016 on the file of the Additional District Munsif Court, Tirupattur, Vellore District.

For Petitioners : Mr. T.M.Hariharan

For R1 : Mr.M.Himavanth
for Mr.S.Marshall



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ORDER

Heard the learned counsel for the petitioners as well as the learned counsel for the respondents. I have carefully perused the records.

2. This revision arises at the instance of the defendants 1 & 2. O.S.No.132 of 2016 had been presented by the 1st respondent on the file of the Additional District Munsif Court, Tirupattur at Vellore District, for the purpose of declaration of title and for injunction.

3. It is the categorical case of the defendants that a check dam, which has been shown as boundary to the plaintiff's property, falls within the defendants' holdings. It is stoutly denied by Mr. M. Himavanth, learned counsel for the 1st respondent/plaintiff, who would state that it falls outside the defendants' holdings and is not a subject matter of the suit. In other words, there is a dispute in identity of the property.



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4. When there is a dispute in identity of the property, the Supreme Court in *Haryana Waqf Board vs. Shanti Sarup and others*, (2008) 8 *SCC 671*, held that it is necessary for an appointment of an Advocate Commissioner to visit the property.

5. Mr. M. Himavanth, would further add that on the date of filing of the application for appointment of an Advocate Commissioner, even a written statement had not been taken on record.

6. Mr.T.M.Hariharan, learned counsel for the petitioners would submit that subsequently, a written statement was filed where under, the claim made in the affidavit filed in the application had been asserted.

7. If an Advocate Commissioner goes with a qualified surveyor and measures the property together with the title deeds of the plaintiff as well as the defendants, that will be useful to the Court at the time of deciding the dispute. Therefore, I do not think, in a suit for title, an



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appointment of Advocate Commissioner is fishing exercise for collecting evidence. An Advocate Commissioner shall be appointed by the learned trial Judge to visit the suit property along with a qualified surveyor. The Advocate Commissioner shall take measurements, not only of the suit schedule mentioned property, but also of the adjoining property on the basis of the title deeds produced by the plaintiff and the defendants together with the revenue records including the FMB.

8. Therefore, the fair and decretal order dated 22.12.2016 made in I.A.No.1108 of 2016 in O.S.No.132 of 2016 on the file of the Additional District Munsif Court, Tirupattur, Vellore District, is set aside. The trial Court is requested to appoint an Advocate Commissioner on or before 30.09.2023 and ensure that the report is available before it on or before 30.11.2023. The costs of the Advocate Commissioner is fixed at Rs.20,000/- (Rupees Twenty thousand only), which shall be borne by the defendants 1 and 2/petitioners herein.



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9. The Civil Revision Petition stands allowed on the above terms.

No costs. Consequently, connected Miscellaneous Petition is closed.

10.08.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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To

The Additional District Munsif
Tirupattur, Vellore District.



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V.LAKSHMINARAYANAN,J.

Kj

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