



C.R.P. No.4089 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 4089 of 2017

and

C.M.P.No. 19174 of 2017

1. K.Muthusamy

2. T.N.Pongiannan @ P.A.Rasu

3. K.Palanisamy

... Petitioners

Versus

1. Tmt. R.Mayilathal

2. N.Selvi

.. Respondents

PRAYER : Civil Revision Petition is filed under Art. 227 of Constitution of India, praying to set aside the fair and decreetal order dated 22.09.2017 made in I.A.No.120 of 2017 in A.S.No. 68 of 2015 on the file of learned Sub-Judge, Sathyamangalam.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.D.R.Arunkumar



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ORDER

Challenging the impugned order passed in I.A.No. 120 of 2017 in A.S.No.68 of 2015, on the file of learned Sub-Judge, Sathyamangalam, the Revision Petitioners herein have preferred this Civil Revision Petition.

2. During the pendency of the appeal, the appellants filed an application to measure the suit property by comparing measurements found in Ex.B2 through the Advocate Commissioner. The said application was strongly objected by the respondents/plaintiffs stating that even before the trial court, the Advocate Commissioner was appointed and he visited the suit property and noted down the physical features and submitted his report with regard to the existence of suit pathway, which was objected by these appellants/defendants before the trial court. Since the suit was dismissed, in the appeal proceedings, they have filed the said application again to measure the property through the advocate commissioner, as such is vexatious one and the same is liable to be set aside.



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3. Considering both side submissions, the first appellate judge held that already the Advocate Commissioner was appointed before the trial court and he submitted the report. Furthermore, before the trial court, the plaintiffs through the revenue records established their pathway right over the property. Aggrieved over that, the defendants preferred this appeal. But, now during the appeal proceedings, they have filed an application to measure the property by comparing Ex.B2, which is 77 years old document, as such is not maintainable for the reason that by this time, on many occasions, the properties were measured and subdivided by the revenue officials. Therefore, by relying the measurements found in Ex.B2, would no way help the court to decide the issue between the parties. Hence, the said application was dismissed. Challenging the said findings, the appellants preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioners/Appellants would submit that disputed portion of the suit property is part and parcel of Mariamman temple, but the plaintiffs claiming red marked portion as shown



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in the plan belongs to them absolutely claiming that it was used as a public street. In fact, the said red marked portion of the suit property all along was used by the devotees of Mariamman Temple to go around the temple. Therefore, the suit property never been portion of the said street and the suit property also elevated by about 1 ft. than concrete street and also content that the suit property, house properties of plaintiffs and Mariamman temple land were all originally portion of the patta land in Old S.F.No.218D owned by Gurulingaiya and those lands are patta lands and not a natham lands as alleged by the plaintiffs. Hence, to prove the same, measurements in the original title is to be compared through Advocate Commissioner and if it is not permitted, their valuable right will be defeated. In an earlier occasion, the Commissioner was appointed and he note down the physical features, but at that time, these documents were not produced by the defendants. To support his contentions, he relied on the authority reported in **2001 (3) MLJ 749** in the case of ***S.Muthuvelu and another vs. Kuttasavu Sethurayar and others***, wherein this court held as follows :-



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“Civil Procedure Code (V of 1908), O.26 – Commissioner – appointment of – At the second appellate stage – Commissioner appointed by trial court submitting a report – First Appellate Court appointing another Commissioner – Dispute between parties not resolved inspite of two Commissioners filing reports – Whether Commissioner can be appointed at Second appellate stage – Trial court directed to appoint an experienced Advocate Commissioner – In order to put an end to the controversy and to give finality.”

5. On perusal of records, it reveals that based on the revenue records and patta, the trial court dealt with the issue and now the plaintiffs contended that parent document of old S.F.No.218D is a patta land, in which the suit property and temple are situated. Therefore to clarify whether it is a natham land or patta land, the suit property has to be measured for the reason that title deeds are deemed as a better document to compare with the revenue records and also if the opportunity is not given to the party as they prayed for, their valuable right over the property would be defeated. But



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without appreciating all those legal implications, the first appellate judge dismissed the application, as such is totally erroneous. Hence, the findings rendered by the first appellate judge in I.A.No.120 of 2017 is set aside and the same is allowed. The Trial Court is directed to appoint an Advocate Commissioner and to measure the property as prayed by the petitioners and dispose the appeal within a period of five months from the date of receipt of copy of this order. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
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To

Sub-Judge,
Sathyamangalam.



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T.V.THAMILSELVI, J.

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