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C.R.P.No.4819 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No.4819 of 2023

and

C.M.P.No.28599 of 2023

1. Tamilselvi
2. Sivaprakash

... Petitioners

-Vs-

1. The State of Tamil Nadu,
rep. by District Collector,
Namakkal at Nallipalayam Post,
Namakkal Dt.
2. The Revenue Divisional Officer,
Tiruchengode at Velur Road,
Tiruchengode Town and Post,
Tiruchengode Taluk, Namakkal Dt.
3. The Tahsildar,
Tiruchengode at Velur Road,
Tiruchengode Town and Post,
Namakkal Dt.
4. The Revenue Inspector,
Tiruchengode Firka,
Tiruchengode Town and Post,
Namakkal Dt.



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5. The Village Administrative Officer,
54, Kottapalayam Village,
Tirumangalam Post and Taluk,
Namakkal Dt.

... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 07.02.2023 passed in I.A.No.256 of 2019 in O.S.No.80 of 2019 on the file of Subordinate Court, Tiruchengode.

For Petitioner	: Mr.B.Jawahar
For Respondents	: Mr. V.Jeevagiridharan, Addl. Govt. Pleader

ORDER

Challenging the impugned order passed in I.A.No.256 of 2019 in O.S.No.80 of 2019 passed by the learned Sub-Judge, Tiruchengode, the Revision Petitioners/plaintiffs preferred this Civil Revision Petition.

2. Before the trial court, the Revision Petitioners/plaintiffs filed an application to appoint an advocate commissioner to note down physical features and also to measure the same with the qualified surveyor. They have filed a suit before the trial court for the relief of declaration and



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permanent injunction. During the pendency of proceeding, they have filed an application to appoint an advocate commissioner. In that suit, all the defendants are Government officials. The trial judge dismissed the application holding that dispute is pending between parties are only with regard to possession of the property, and hence the appointment of advocate commissioner to note down physical features would not help the to prove their claim. Challenging the said findings, the revision petitioners/plaintiffs preferred this Civil Revision Petition.

3. The learned counsel for Revision Petitioners would submit that the defence of defendants is that it is a natham land, but in fact, it is a ryotwari patta land. Hence, the existence of pathway would help the revision petitioners/plaintiffs to prove their claim. But without considering their submissions, the trial judge erroneously dismissed the application. Hence, they prayed to set aside the findings of trial judge.

4. By way of reply, the learned Addl. Government Pleader appeared and he raised strong objections. Accordingly, he prayed to dismiss this Civil Revision Petition.



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5. On seeing the facts, the revision petitioners/plaintiffs approached the court for the relief of declaration and permanent injunction, but the defence taken by the defendants is that the nature of property totally differs. So, to prove the existence of public road runs in survey No.37/2, necessity arose that the appointment of advocate commissioner to note down the physical features would help them to prove their claim. Therefore, the reasons assigned by the trial judge is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.256 of 2019 in O.S.No.80 of 2019 is set aside and the said application is ordered to be allowed. The trial judge is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of copy of this order. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
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3. The Revenue Divisional Officer,
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Tiruchengode Town and Post,
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5. The Revenue Inspector,
Tiruchengode Firka,
Tiruchengode Town and Post,
Namakkal Dt.
6. The Village Administrative Officer,
54, Kottapalayam Village,
Tirumangalam Post and Taluk,
Namakkal Dt.
7. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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