



C.R.P(MD)No.1157 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.04.2023

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.1157 of 2023

and

C.M.P(MD)No.5510 of 2023

Jayachandran

... Petitioner/12th Respondent/
12th Defendant

Vs.

1.Tamilarasi

...1st Respondent/Petitioner/
Plaintiff

2.Sethu

3.Latha

4.Uma

5.Chellapandi

6.Manimegalai

7.Nagalakshmi

8.Savithiri

9.Packiyam

10.Raja

11.Mani @ Manikandan



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12.Panchavarnam

...Respondents 2 to 12/
Respondents 1 to 11/
Defendants 1 to 11

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PRAYER: Civil Revision Petition is filed under Section 227 of the Constitution of India, to call for the records and set aside the order, dated 28.02.2023 passed in I.A.No.222 of 2021 in O.S.No.139 of 2021 on the file of the learned Subordinate Judge's Court, Thirumangalam.

For Petitioner : Mr.V.Chandra Pandi

ORDER

The present civil revision petition has been filed against the order, dated 28.02.2023 passed in I.A.No.222 of 2021 in O.S.No.139 of 2021 on the file of the learned Subordinate Judge's Court, Thirumangalam.

2. The petitioner is the 12th defendant before the Sub Court, Thirumangalam in O.S.No.139 of 2021. The said suit has been filed by the first respondent for declaration and recovery of possession of the suit schedule property from the defendants 1 to 12, which includes the petitioner herein. The first respondent/plaintiff also filed I.A.No.222 of 2021 under Order 26 Rule 9 of C.P.C for appointment of an Advocate Commissioner. By the impugned order, the Sub Court, Thirumangalam has allowed the application with the following observations:



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"8. This court views that the original suit has been filed by the plaintiff against the defendants for the relief of declaration of title, recovery of possession and for other reliefs in respect of the suit property. It is apparently seen that the plaintiff contended that the respondents/ defendants 1 to 10 have high handedly encroached the suit property by putting up sand and gravels and the 11th and 12th respondents have encroached the suit property by way of parking the vehicles. This court after hearing both sides and considered the relieves involved in the original suit, it is highly essential to note down the physical features and measurements of the plaint schedule property to decide the issues involved in the original suit. Moreover this court views that the appointment of advocate commissioner to note down the physical features and measurement of suit property is necessary for the proper and complete adjudication of dispute and issues involved in this suit. Considering all the above aspects and also considering the relives involved in the original suit, this court is of the view that the application of appointment of advocate commissioner is highly necessary and inclined to allow this application in the interest of justice. Thus the point is answered accordingly.

9. In the result, this application is allowed. Thiru.N.Sankaralingam, Advocate is appointed as commissioner to this petition mentioned purpose. The commissioner/Advocate is directed to inspect the suit property with due notice to both parties with bonafide documents and note down the physical features of suit properties on the date of his/her visit on the points raised by both the counsels/parties. If any need or request of parties/counsels, the Commissioner/Advocate take the necessary assistance of qualified surveyor or Taluk Surveyor for the purpose of measurement of suit properties with appropriate title deeds or survey plans. This court has fixed the remuneration of Rs. 12,000/- (Rupees Twelve thousand only) to the commissioner. The Petitioner shall be paid the remuneration to the Advocate Commissioner directly on or before 13.03.2023. If the amount is not paid, the petition stands dismissed without any further reference. Call on 14.03.2023."



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3. The petitioner challenging the order appointing the Advocate Commissioner on the ground that the respondents have no rights over the suit schedule property. It is submitted that the petitioner is the title holder of the suit schedule property. There is no necessity for appointing an Advocate Commissioner. It is further submitted that the suit has been declined implying that the respondents have no title over the property. Therefore, he seeks declaration of the title.

4. I have perused the impugned order. I am of the view that the appointment of Advocate Commissioner under Order 26 Rule 9 of C.P.C., will not prejudice the petitioner. Merely because the petitioner has a title over the suit schedule property *ipso facto* would not mean that the respondent/plaintiff has no right to seek for declaration. There is no merit in the civil revision petition.

5. The present Civil Revision Petition stands dismissed with the above observations. The learned Subordinate Judge, Thirumangalam is directed to dispose of the suit in O.S.No.139 of 2021 as expeditiously as possible preferably within a period of 12 months from the date of receipt



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of copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The learned Subordinate Judge's Court,
Thirumangalam
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

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