



C.R.P.(MD).No.1386 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.1386 of 2019

and

C.M.P(MD) No.7387 of 2019

1. Chinnu @ Pitchai
2. Chinnappan @ Varadharajaperumal
3. Alagarsamy
4. Suseela
5. Amirdhalakshmi
6. Navaneethammal
7. Karuthakannu @ Karuthamaniyammal

... Petitioners/Respondents 5 to 11/
Respondents 5 to 11/Defendants 5 to 11
-vs-

Perumal Gounder (Died)
Ponandi Gounder (Died)

1. Andiyappa Gounder

... 1st Respondent/Petitioner/Petitioner/
Plaintiff

2. Ponnusamy
3. Akandiammal

... Respondents 2 and 3/Respondents 3 &4
Respondents 3 & 4/Defendants 3 & 4

PRAYER: Civil Revision Petition is filed under Section 115 of Civil Procedure Code, against the fair and decretal order dated 03.04.2019 passed in E.A.No.1 of 2019 in E.P.No.105 of 1992 in O.S.No.94 of 1982 on the file of the District Munsif Court, Manapparai.



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For Petitioners : Mr.G.Sridharan

For Respondents : Mr.S.Muthumalai Raja - for R1
: No appearance – for R2 and R3

ORDER

The present Civil Revision Petition has been filed by the petitioners under Section 115 of Civil Procedure Code, against the fair and decreetal order dated 03.04.2019 passed in E.A.No.1 of 2019 in E.P.No.105 of 1992 in O.S.No.94 of 1982 on the file of the District Munsif Court, Manapparai.

2. The petitioners herein are the defendants 5 to 11, and the 1st respondent herein is the plaintiff before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. It appears that originally the plaintiff/petitioner has filed the suit for declaration and possession in O.S.No.94 of 1982. Since the suit was dismissed on 21.03.1983. The plaintiff preferred an appeal in A.S.No.115 of



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1984. In which, decree was granted by reversing the order of the trial Court granting decree only in respect of the suit schedule properties 1, 3 and 5 and dismissed against the suit schedule properties 2 and 4. After the order of the appellate Court, when the petitioners proceeded to execute the decree, he faced some issue in respect of the survey number. Therefore, he filed an application to amend the execution petition. The same was objected by the defendants. Subsequent to the objection, the defendants preferred C.R.P(MD) No.1692 of 2016. In which, this Court has passed an order giving liberty to the plaintiff to amend the plaint as well as the decree.

5. In such circumstances, the plaintiff has filed an application in E.A.No.1 of 2019 for appointment of an Advocate Commissioner to correlate the old survey number and the current survey number, so as to execute the award.

6. The learned counsel appearing for the defendants would submit that, when there is an order passed by the this Court in C.R.P(MD) No.1692 of 2016 to amend the plaint, and that even according to the plaintiff, as per the observation of the order dated 12.04.2016 in E.A.No.20 of 2016, the plaintiff



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has got a revenue record with reference to the old and new survey numbers, it is improper for the Court to appoint an Advocate Commissioner for such purpose. Hence, the learned counsel for the defendants stoutly object the said application.

7. This Court has given anxious consideration to the submissions of the learned counsel on either side.

8. After hearing either side, the Court below has allowed the petition for appointment of Commission for correlating the old survey number and the new survey number. The objection raised by the learned counsel for the petitioners/defendants is that when the specific order was passed by this Court to amend the suit property, and the plaint schedule property, in C.R.P. (MD) No.1692 of 2016, and when E.A.Nos.148/17, 179/18 and 193/2018 has already been filed to amend the plaint and the decree, and when the same is pending, the very appointment of Commissioner for the very same purpose is contrary to the order passed in C.R.P (MD) No.1692 of 2016.



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9. This Court is in full agreement with the contention of the learned counsel for the petitioners. Therefore this Court is of the view that the order of the learned trial Judge in appointing the Advocate Commissioner is liable to be interfered with.

10. Therefore, this Civil Revision Petition is **allowed**. However, considering the long pendency of this matter, the learned trial Judge is directed to dispose of the E.A.Nos.148 of 2017, 179 of 2018 and 193 of 2018 as expeditiously as possible preferably within a period of three months from the date of receipt of the copy of this order. After passing the order in the above said E.As, the learned trial Judge is directed to dispose of the Execution Petition within a period of three months thereafter. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

07.08.2023

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

1. The District Munsif Court,
Manapparai.



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C.KUMARAPPAN,J.

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