



C.R.P.(MD).No.2558 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2558 of 2017

and

C.M.P(MD) No.11907 of 2017

1. S.Subbiah
 2. S.Ramanujam
- ... Petitioners/Petitioners/Plaintiffs

-VS-

1. The Taluk Office,
Nanguneri,
Represented through its Tahsildar,
Tirunelveli District.
 2. The Government of Tamil Nadu,
Represented through its District Collector,
Tirunelveli District,
Kokkirakulam,
Tirunelveli.
 3. N.Nambi
 4. N.Nagammal
- ... Respondents/Respondents
Defendants

(The Respondents 3 and 4 ex-parte before the
trial Court, hence, notice on them may dispense with)



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PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.10.2017 passed in I.A.No.675 of 2017 in O.S.No.84 of 2012 on the file of the Sub Court, Valliyoor.

For Petitioners : Mr.H.Arumugam

For Respondents : Mr.M.Senthil Ayyanar
Government Advocate
For R1 and R2

: Exparte – for R3 and R4

ORDER

The instant Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 04.10.2017 passed in I.A.No.675 of 2017 in O.S.No.84 of 2012 on the file of the Sub Court, Valliyoor.

2. The petitioners herein are the plaintiffs and the respondents are the defendants before the Court below.

3. The learned Counsel appearing for the petitioners would contend that the trial Court has dismissed the Commission application, on the ground that



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there is no issue in respect of identity of the property and that in a suit for declaration, the parties have to prove their ownership and possession by letting documentary and oral evidence and therefore, an appointment of Commission is erroneous and dismissed the application.

4. It is also pertinent to mention here that the respondents 1 and 2 have also made an endorsement for no objection. In spite of that, the trial Court has dismissed the application. Aggrieved with the order, the petitioners are before this Court.

5. It is the submission of the learned counsel for the petitioners that there is an issue in respect of the Survey No.680/5 of Chengalaakurichi Village. The learned counsel for the petitioners would further submit that though the suit property is within the admitted four boundaries, the defendants disputed the S.F.Number. Therefore, to prove that the suit property is within the said S.F.Number, appointment of an Advocate Commissioner is essential.



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6. In this regard, the learned counsel appearing for the petitioners has also relied upon the judgment of Hon'ble Supreme Court reported in **2000 (6) Supreme 389 (Shreepat Vs. Rajendra Prasad and others)**.

7. Per contra, the learned Government Advocate appearing for the respondents 1 and 2 would submit that the very application has been filed at a belated stage, that too, when the suit was pending for cross-examination of P.W.2. Therefore, he would submit that the very application has been filed to delay the suit proceedings. Hence, he prayed to dismiss the Civil Revision Petition.

8. This Court has given it's anxious consideration to the submissions of the learned counsel appearing for the petitioners and the learned Government Advocate appearing for the respondents 1 and 2.

9. Before embarking into the disputed facts of the case, this Court deems it appropriate to refer to the judgment relied on by the learned counsel for the petitioners. In the judgment of the Hon'ble Supreme Court reported in **2000 (3) MLJ 84 (Shreepat vs. Rajendra Prasad and others)**, the Hon'ble



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Supreme Court has held that whenever there is a dispute in respect of the identity of the property, more specifically in respect of the S.F.Number, then to identify the correct S.F.Number, appointment of Advocate Commissioner along with Surveyor is essential.

10. The learned Counsel for the petitioners has also relied upon another judgment of the Hon'ble Supreme Court reported in **2017 4 SCC 617 (Ravish and another vs. R.Bharathi)**, wherein the Hon'ble Supreme Court while disposing of the Civil Appeal has held that whenever there is a disputed fact in respect of the suit property, the Hon'ble Supreme Court held that it is appropriate to appoint an Advocate Commissioner to get the exact location on the disputed site.

11. Therefore, what emerges from the above ratio is that whenever there is a dispute in respect of the identity of the property, more specifically in respect of S.F.Number, then the appointment of Advocate Commissioner is necessary for the ultimate solution to find out and resolve the issue more lucidly.



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12. Therefore, this Court is of the view that the finding of the Court below in repelling the prayer of the petitioners is erroneous. Therefore, this Court is inclined to interfere with the order of the Court below.

13. In the result, this Civil Revision Petition stands **allowed** and thereby, the learned Sub Judge, Valliyoor, is directed to appoint an Advocate Commissioner along with Surveyor. Considering the suit is of the year 2012, the Court below is directed to dispose of the suit in O.S.No.84 of 2012 as expeditiously as possible. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

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

1. The Sub Court,
Valliyoor.



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