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CRP NO.1894 OF 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2024

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THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

CRP NO.1894 OF 2023
AND CMP NO.12076 OF 2023

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Petitioner/Petitioner /
Plaintiff

Vs.

1.The Collector of Villupuram District
Office of the Collector
Villupuram.
(Now Kallakurichi District)

2.The Tahsildar Chinnasalem
Kuspa Chinnasalem & Taluk
Villupuram District.
(Now Kallakurichi District)

3.The Revenue Inspector
Revenue Inspector Office
Nainarpalayam Village, Chinnasalem Taluk,
Villupuram District.
(Now Kallakurichi District)

4.The Village Administrative Officer
Karunthalakurichi Village,
Chinnasalem Taluk, Villupuram District.
(Now Kallakurichi District)

5.A.Murugesan

...

Respondents /
Respondents /
Defendants



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated June 28, 2022 made in I.A.No.1433 of 2021 in O.S.No.185 of 2016 on the file of the I Additional District Munsif Court, Kallakurichi.

For Petitioner : Ms.R.Divyapreathika
For Respondents : Mr.M.Murali
1 to 4 Government Advocate

ORDER

This Civil Revision Petition is directed against the order dated June 28, 2022 passed in I.A.No.1433 of 2021 in O.S.No.185 of 2016 by the 'learned I Additional District Munsif, Kallakurichi' [henceforth 'Trial Court' for brevity].

2. The petitioner / plaintiff filed two Interlocutory Applications in I.A.Nos.1433 and 1434 of 2021 in O.S.No.185 of 2016 before the Trial Court for appointment of Advocate Commissioner and to re-open the plaintiff's side arguments and the Trial Court passed a common order in both the Interlocutory Applications. This Civil Revision Petition is filed by the revision petitioner against the order passed in I.A.No.1433 of 2021 in O.S.No.185 of 2016.



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3. The revision petitioner herein is the plaintiff and respondents herein are the defendants in the Suit in O.S.No.185 of 2016 before the Trial Court.

4. For the sake of convenience, hereinafter the parties will be referred to as per their array before the Trial Court.

5. Heard Ms.R.Divyapreathika, learned counsel appearing for the revision petitioner and Mr.M.Murali, learned Government Advocate for the respondents 1 to 4.

6. It is the case of the revision petitioner / plaintiff that he filed a Suit for permanent injunction restraining the defendants from altering the Suit property which is Odai situated in R.S.No.49/11 of an extent of 0.06.50 Ares in Karunthalakurichi Village, Chinnasalem Taluk into a Pattai; that the Odai runs from west to east direction measuring east-west 116.6 meters and north-south 3.8 meters on the west and 7.8 meters on the east; that the Odai has been in existence since time immemorial and serves as essential function by carrying the rain water and also the excess water from the adjacent patta lands to *Nalla Thanneer Kulam* situate in



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R.S.No.48/14 of Karunthalakurichi Village; that the plaintiff is having patta lands in R.S.No.48/4, 5, 6, 7 and 9 situate adjacent to the south of the Suit Odai; that the 5th defendant is having lands in R.S.No.49/6 situate to the north of the Suit Odai; that the Suit Odai is 3 feet below level of northern patta lands and 2 feet below level of the southern patta lands which facilitates the Odai to drain the rain water and excess water run off from the Patta lands to the said *Nalla Thanneer Kulam*; that the 5th defendant does not have any right in the Suit property, but taking advantage of the wrong mentioning of the Suit property as Pattai in the 'A' Register, the 5th defendant is trying to alter the Suit Odai into a Pattai; that the 5th defendant approached the defendants 2 to 4 for altering the Suit Odai into Pattai and they measured the Suit property in the month of June 2016; that while measuring the Suit property, the plaintiff and other persons enquired about the measurement and objected for alteration of the Suit property; that the defendants 2 to 5 were unyielding to the objections. Hence, the plaintiff filed the Suit for permanent injunction restraining the defendants from in any manner altering the Suit Odai into a Pattai.



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7. On perusal of records, it is seen that the revision petitioner filed two Interlocutory Applications in I.A.Nos.1433 and 1434 of 2021 in O.S.No.185 of 2016 for appointment of Advocate Commissioner to inspect the Suit property in order to prove that the S.No.49/2011 is Odai land and to reopen the plaintiff's side arguments. The Trial Court, after analysing the oral and documentary evidence concluded that whether the Suit property is a Odai or Pattai can be established only through the revenue records. As such, an Advocate Commissioner cannot be appointed to collect the evidence. The Trial Court further concluded that the Suit was filed in the year 2016 and trial commenced in September 03, 2018 and after a lapse of several years, that too, after reserving the case for Judgment, the plaintiff filed two applications in I.A.No.1433 of 2021 for appointment of an Advocate Commissioner and I.A.No.1434 of 2021 for re-opening the case. Accordingly, dismissed both the Interlocutory Applications.

8. Feeling aggrieved with the dismissing Order dated June 28, 2022 in I.A.No.1433 of 2021 in O.S.No.185 of 2016 filed for appointment of Advocate Commissioner, the revision petitioner has filed this Civil Revision Petition.



9. The learned counsel for the revision petitioner submits that the 5th defendant / 5th respondent is trying to convert the Suit property viz., Odai into Pathway with the aid of defendants 1 to 4 and in order to prove the said fact, appointment of Advocate Commissioner to note down the physical features of the Suit property is very much essential to decide whether Suit property is Odai or Pattai. The Trial Court has failed to consider the said aspects. Accordingly, she prayed to allow the Civil Revision Petition.

10. Mr.M.Murali, learned Government Advocate submits that while the Suit was posted for Judgment, the revision petitioner filed the application with a view to drag on the Suit proceedings. Revenue Records are sufficient to decide the case. The Trial Court after considering the entire facts and circumstances of the case, has dismissed the application. There is no warrant to interference with the Trial Court Order.

11. This Court has considered the submissions made by the learned counsel for the revision petitioner as well as the learned Government Advocate for the respondents 1 to 4.



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12. The revision petitioner filed the Suit in the year 2016 and trial commenced on September 03, 2018. While the matter was reserved for judgment, the revision petitioner filed these Interlocutory Applications for appointment of Advocate Commissioner and for re-opening the evidence of plaintiff. The Trial Court has observed that these applications were filed after a long delay from the date of commencement of trial and the matter had been reserved for Judgment which renders it highly belated and not maintainable in the eyes of law. In the considered opinion of this Court, there is no irregularity or infirmity in the Order passed by the Trial Court and this Court is not inclined to interfere with the same. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

The I Additional District Munsif Court
Kallakurichi.



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R.SAKTHIVEL, J.

TK/MSM

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