



C.R.P.(PD).No.3660 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.09.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 3660 of 2024

&

C.M.P.No. 19885 of 2024

V.Anbu

...Petitioner

Vs.

Periyasamy (Died)

1.Murugayan

2.Muthusamy

3.Sivakumar

4.Prakash

5.Rajasekar



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6.Ravikumar

7.Jayakumar

8.K.Veerappan

9.Subburayan

10.Kuppu Durai

Ganesan (Died)

11.The District Collector,
Namakkal District,
Namakkal.

12.The District Revenue Officer,
Namakkal Collectorate Office,
Namakkal District.

13.Chinapillai

...Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 12.04.2024 made in I.A.No.193 of 2016 in O.S.No.48 of 2016 on the file of the District Munsif Court, Paramathi.

For Petitioner : Mr. C.Ramaraj

For Respondents : Mr. T.L.Thirumalaisamy



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1 to 6

For Respondents :
11 & 12

Mr. T.Arun Kumar
Additional Government Pleader.

ORDER

Heard Mr.C.Ramaraj for the civil revision Petitioner,
Mr.T.L.Thirumalaisamy for respondents 1 to 6 and Mr.T.Arun Kumar
for respondents 11 and 12.

2. This Civil revision Petition is filed challenging the order of
the learned District Munsif, Paramathi, in I.A.No.193 of 2016 in
O.S.No.48 of 2016.

3. O.S.No.48 of 2016 is a suit for declaration that the plaintiffs
and the defendants 1 to 5 have a common right over the suit property.
The suit is not only with regard to agricultural lands but also with
regard to a pathway that is said to exist on the suit survey numbers.
Records reveal that an application for appointment of an Advocate



Commissioner came to be allowed by order of the learned Trial Judge as early as on 24.06.2016. The Advocate Commissioner so appointed, unfortunately, did not file his report till 20.07.2023. Subsequently, the plaintiff took out an application in I.A.No.8 of 2023 seeking police protection to execute the warrant of the Advocate Commissioner. The application came to be allowed on 20.07.2023.

4. Aggrieved by the order appointing the Advocate Commissioner as well as granting Police protection to the Advocate Commissioner to survey property, two revisions were preferred, namely, C.R.P.Nos.3221 and 3239 of 2023. The said revisions came to be ordered by this Court directing the learned Trial Judge to receive counter from the defendants in I.A.No.193 of 2016 and I.A.No.8 of 2023 and thereafter proceed in accordance with law.

5. In obedience to the direction of this Court, the learned Trial Judge received a counter from the civil revision petitioner, heard



arguments and allowed the application for appointment of the Advocate Commissioner. Hence, this revision.

6. Mr.C.Ramaraj contends that the plaintiff's ancestors had purchased the property as early as in the year 1963 and put up construction over the property. He pleads that there is no necessity for appointing an Advocate Commissioner for the relief sought in the suit.

7. Per contra, Mr.T.L.Thirumalaisamy would point out to paragraph No.4 of the written statement, where under the defendants have denied the existence of the pathway itself. Therefore, there is a necessity for appointment of the Advocate Commissioner.

8. The learned Additional Government Pleader submits that they will abide by the direction of this Court.



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9. I have carefully considered the arguments of both the sides and perused the records.

10. Here is a case, where the plaintiffs pleads there is in existence of a common pathway. This plea is denied by the defendants. *Whether the pathway is in existence or not* would have to be ascertained only by appointing the Advocate Commissioner. If the Commissioner were to file his report on the existence of the pathway, it would throw light on the matter in dispute, namely, the very existence of the pathway. Therefore, no exception can be taken to the order passed by the learned Trial Judge appointing the Advocate Commissioner. It is a settled position of law where the identity or existence of pathway is in dispute, an Advocate Commissioner ought to have been appointed. The learned Trial Judge has merely followed



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this dictum and has passed the order. I do not find any reason to revise the same.

11. The Trial Court shall take into consideration the fact that from 2016 till 2023, the Advocate Commissioner has not filed his report. The Trial Court shall ensure that the report is made available on the file of the Court within a period of 4 weeks from the date of receipt of a copy of this order. In case the Advocate Commissioner does not file his report, the learned Trial Judge shall recall the warrant granted to the Advocate Commissioner and appoint a fresh person, so as the proceedings are not delayed any further.

12. With the above observation, the Civil Revision Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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Index : Yes/No



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Internet : Yes/No
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To

1.The District Munsif Court,
Paramathi.



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V.LAKSHMINARAYANAN, J.

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