



WEB COPY



C.R.P.No.3637 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.3637 of 2019
and
C.M.P.No.23867 of 2019

1.Lakshmi
2.Thirupathi

... Petitioners

Vs.

1.Veerasley (Deceased)
2.Periasamy
3.Perumal
4.Valliyammal
5.Ezhilarasan
6.Tamilarasi
7.Thangadurai
8.Muniyammal
(Respondent-1 died, Respondents 4 to 8
are brought on record as LR's of deceased
R1 viz., Veerasley vide Court order
dated 16.10.2023 made in CMP.No.32&29/2021
in CRP.No.3637/2019)

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 12.09.2019 made in I.A.No.349 of 2018 in O.S.No.123 of 2016 on the file of the District Munsif Court, Krishnagiri.

1/6



WEB COPY



C.R.P.No.3637 of 2013

For Petitioners : M/s..S.Kanniah
For Respondent 1 :Died
For Respondent 2&3 : Mr.S.Vinoth Kumar

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioners seeking appointment of Advocate Commissioner to note down the physical features, boundaries and separate pathway to suit lands with the help of VAO and surveyor and file a report.

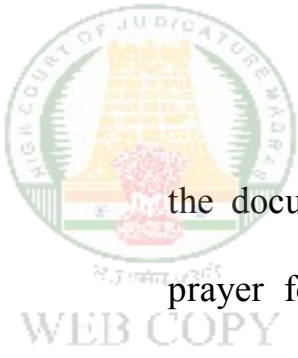
2. The petitioners herein filed a suit for declaration of title and injunction against the respondents. In the plaint, it has been specifically averred by the petitioners that the suit property is lying in the midst of 2nd petitioner's lands and there is no pathway to enable any third party to enter the property.

3. The 1st respondent herein filed another suit which was earlier in time in O.S.No.217 of 2013 seeking declaration of title and injunction against the revision petitioners and others. Both the suits are tried together.



4. The learned counsel for the petitioners submits that there is a dispute with regard to the existence of pathway to reach the suit property and therefore, the appointment of Advocate Commissioner is absolutely necessary in this case.

5. A reading of plaint would suggest that petitioners asserted in the plaint that there was no pathway in the suit property and the suit property is lying in the midst of 2nd petitioner's lands. The learned counsel for the petitioners submitted that in the connected suit filed by the 1st respondent, they are claiming a pathway right. It is seen from the impugned order that in the connected suit in O.S.No.217 of 2013, already the petitioners filed an application for appointment of Advocate Commissioner and the same was dismissed. Challenging the said order, the petitioners have not preferred any revision. Therefore, the present application filed by the revision petitioners seeking appointment of Advocate Commissioner to note down the physical features is not at all necessary having regard to the prayer sought for in the present suit. The petitioners are seeking declaration of title and injunction in respect of agricultural lands. The petitioners have to prove their title based on



C.R.P.No.3637 of 2024

the documents and they have to prove cause of action for maintaining the prayer for injunction. For the said purpose, the appointment of Advocate Commissioner is not at all necessary. In case, the 1st respondent claimed any right, it is for him to prove the same in the manner known to law and when the 1st respondent is not interested in seeking appointment of Advocate Commissioner, the petitioners' prayer for appointment of Advocate Commissioner especially when the commission petition filed in the other suit presented by the 1st respondent was already dismissed is not maintainable. The Court below rightly dismissed the petition and I do not find any illegality in the order.

6. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

08.01.2024

Index : Yes / No
Internet : Yes / No
nr



C.R.P.No.3637 of 2017

To
WEB COPY

The learned District Munsif Court, Krishnagiri.



WEB COPY



C.R.P.No.3637 of 2019

S.SOUNTHAR, J.

nr

CRP.No.3637 of 2019
and
C.M.P.No.23867 of 2019

08.01.2024