



C.R.P.(PD)(MD)No.1260 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.R.P.(PD)(MD)No.1260 of 2024

and

C.M.P.(MD)No.7249 of 2024

Krishnamoorthy

... Petitioner/Petitioner/Plaintiff

vs.

1.Krishnan

2.Mahalakshmi

3.Santhi

4.Symala Gowri

5.Chandrakleha

6.Venkateshwari

7.Senthilkumar

8.M.Santhi

... Respondents/ Respondents/Defendants

Prayer:- Civil Revision Petition filed under Section 227 of the Constitution of India, against the Fair and Decretal order made in I.A.No. 1 of 2021 in O.S.No.90 of 2021 dated 23.02.2024 on the file of the Sub Court, Sankarankovil.

For Petitioner

: Mr.M.Thirunavukkarasu

For Respondents

: Mr.P.Veerapandi for R1 to R5

No Appearance for R6 to R8



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ORDER

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The Civil Revision Petition is filed against the Fair and Decretal order of the learned Sub Judge, Sankarankovil, dated 23.02.2024 in I.A.No.1 of 2021 in O.S.No.90 of 2021 dated 23.02.2024.

2.The said Interlocutory Application was filed under Order 26 Rule 9 of the Code of Civil Procedure, to appoint an Advocate Commissioner to inspect the suit property and note down the physical features and also submit a report with plan. The said application is dismissed by the trial Court on the ground that when the controversy to be decided is relating to the title of the parties. It is for the parties to prove their title independently and there is no necessity to inspect the suit property and file a report.

3.The learned counsel appearing on behalf of the petitioner, taking this Court through the pleadings of the parties would submit that when it is the claim of the plaintiff that the settlement deed has been fraudulently registered in respect of the 5 cents land when it formed part of the plaintiff's property. The defendants resisted the said claim and



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especially contested in paragraph No.8 of the written statement that in the sale deed dated 13.11.2001 in respect of the description of the 3 acres and 33 cents instead of mentioning Kalugumalai Road as the northern boundary, it is mentioned as if the property is on the northern side of the Kalugumalai Road and therefore, the confusion.

4.Thus, it can be seen, upon considering the case of the parties, that there is a genuine dispute as to the identity and physical features of the suit schedule property. If that be the case, the reasoning given by the trial Court that the appointment of the Advocate Commissioner is unnecessary cannot be countenanced.

5.In view thereof, the Civil Revision Petition is allowed. The order dated 23.02.2024 passed in I.A.No.1 of 2021 in O.S.No.90 of 2021 passed by the learned Sub Judge, Sankarankovil, is set aside. The trial Court is directed to appoint an Advocate Commissioner, before whom, both parties shall submit a copy of the respective documents relied upon by them and the Advocate Commissioner shall take into consideration as per the documents and apart from the same as per the field map with the help



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of the Surveyor to measure the property and prepare the plans and also note down the physical features of the property and submit a comprehensive report before the trial Court. While appointing the Advocate commissioner, the trial Court will also fix the remuneration that would be borne by the petitioner herein. No costs. Consequently, connected miscellaneous petition is closed.

10.07.2024

NCC : Yes / No
sji

To

The Sub Judge, Sankarankovil.



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D.BHARATHA CHAKRAVARTHY, J.

sjj

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