



C.R.P(MD)No.2282 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.2282 of 2019

and

C.M.P(MD)No.11867 of 2019

1.Subramanian

2.P.Periyasamy

3.P.Ganesan

... Petitioners/Petitioners/
Plaintiffs

Vs.

1.The Tahsildar,
Lalgudi,
Trichy District.

2.The Revenue Divisional Officer,
Paramasivapuram,
Lalgudi,
Trichy District.

3.The District Revenue Officer,
Trichy District,
Trichy.

4.The District Collector,
Trichy District,
Trichy.

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5.S.Pappathi

6.S.Ganesan

7.S.Thailan

8.S.Kamalaparvathi

9.Punithavathi

10.Abiramasundari

11.Subbulakshmi

12.Ramamoorthy

13.Dhanalakshmi

... Respondents/Respondents
Defendants

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records in I.A.No.1 of 2019 in O.S.No.337 of 2014 on the file of the learned District Munsif, Lalgudi and set aside the fair and decreetal order made therein, dated 03.06.2019.

For Petitioners : M/s.V.Sujatha Siddharthan

For R-1 to R-4 : Mr.C.Satheesh
Government Advocate

R-5 & R-11 : Died

For R-6 to R-10
& R-13 : Mr.R.Sundar

For R-12 : No appearance



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ORDER

The plaintiffs in O.S.No.337 of 2014 on the file of the District Munsif Court, Lalgudi are the revision petitioners herein. The plaintiffs had filed a suit for declaration of title, permanent injunction, demarcation of boundaries and for grant of patta. Pending suit, the plaintiffs had filed I.A.No.1 of 2019 for appointment of Advocate Commissioner to note down the physical features of the property with the help of a surveyor and to file a report and a plan.

2. The defendants in the suit filed a counter and stoutly resisted the said claim on the ground that, earlier the plaintiffs had filed I.A.No.233 of 2014 and thereafter, they have withdrawn the same. Hence, the present application is not maintainable. Further the defendants have contended that when the case was posted in the list for hearing, the present application has been filed belatedly with an intention to drag on the proceedings.



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3. The Trial Court after considering the submissions on either side has arrived at a finding that, for the purpose of proving the title and the possession, the defendants cannot take recourse to appointment of Advocate Commissioner. There is no allegation that the defendants have encroached upon the plaintiffs property. Therefore, the appointment of Commissioner is unnecessary. Challenging the same, the present revision petition has been filed.

4. The learned Counsel appearing for the revision petitioner has contended that unless a Commissioner is appointed and the measurements are recorded and a report and plan is filed, the plaintiffs would be put to great prejudice.

5. Per contra, the learned Government Advocate appearing for the official respondents had contended that the plaintiff cannot take recourse to the Advocate Commissioner for the purpose of collecting evidence.



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6. A perusal of the plaint and the written statement would clearly establish that, the plaintiffs not only seek a prayer of declaration of title and permanent injunction, but also want demarcation of the boundaries of the suit schedule property. A perusal of the schedule of property further indicates that, the four boundaries have been specifically mentioned for all the three items of the property. Therefore, in such an event, question of appointing an Advocate Commissioner to note down the physical features and prepare a plan would not arise at this stage. In case, if the Trial Court arrives at a finding that the plaintiffs are entitled to a decree for declaration and permanent injunction and the Trial Court further finds that there is some boundary dispute with the defendants, the Trial Court would be at liberty to consider the prayer of the plaintiffs for demarcation of boundary. Therefore, as an interim relief, the question of appointment of Advocate Commissioner for the purpose of fixing boundaries would not arise.



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7. With the above said observation, this Civil Revision Petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

04.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

- 1.The District Munsif Court,
Lalgudi.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Order made in
C.R.P(MD)No.2282 of 2019

04.04.2024