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C.R.P. No.3541 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P. No.3541 of 2022 and
C.M.P. No.18847 of 2022

Nachiyappan

... Petitioner

Vs

1.The Collector

Office of the Collector, Villupuram

2.The Revenue Officer

Office of the Revenue Officer, Villupuram

3.The Revenue Divisional Officer

Office of the Revenue Divisional Officer, Kallakurichi

4.The Tahsildar

Office of the Tahsildar, Chinnasalem.

5.Kannan

6.Jayaraman

7.Vellaiammal

8.Rajendran

9.Sivakumar

... Respondents



C.R.P. No.3541 of 2022

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 10.08.2022 made in I.A. No.377 of 2022 in O.S. No.266 of 2016 on the file of I Additional District Munsif Court, Kallakurichi.

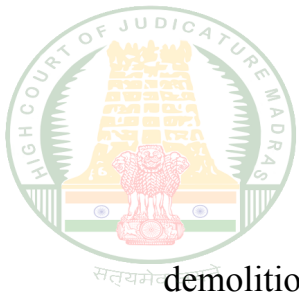
For Petitioner : Ms.R.Divyapreathika

For Respondents : Mr.T.Arunkumar for R1 to R4
Mr.K.M.Hareesh
for M/s.P.V.Law Associates for R5
Mr.Krishnasamy Chinnasamy for R6

ORDER

This revision has been filed against the order of the I Additional District Munsif Court, Kallakurichi dated 10.08.2022 made in I.A. No.377 of 2022 in O.S. No.266 of 2016. The revision petitioner herein is the the plaintiff in the above suit. He has filed the said suit for permanent injunction. Pending suit, the revision petitioner has filed an interlocutory application for appointment of an Advocate-Commissioner.

2. In the interregnum, the fifth respondent had preferred a complaint with the Revenue Divisional Officer, Kallakurichi, namely the third respondent herein and the Revenue Divisional Officer gave a finding with regard to the encroachment made by the plaintiff/revision petitioner herein and directed the



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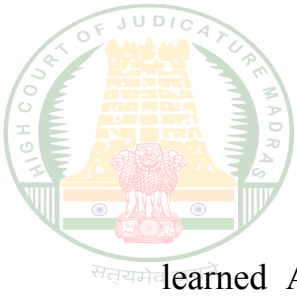
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demolition of cement sheet compound wall. The said RDO enquiry was challenged by the revision petitioner/plaintiff in Crl.R.C. No.233 of 2017. This court has quashed the RDO'S enquiry and directed for a fresh enquiry.

3. According to the revision petitioner, it is a patta land and patta stands in favour of the vendor of the revision petitioner in Patta No.792.

4. Per contra, the learned counsel appearing for the fifth respondent, who is the contesting defendant in the suit, submitted that from time immemorial they are using the said place as passage and hence they are entitled to use it as a passage by taking into consideration their continuous usage. In other words, it should be treated as 'nilaviyal padhai', they are entitled to make use of the same as such a pathway. The next contention raised by the learned counsel appearing for the fifth respondent is that the said property which is not in dispute, has been gifted to the local panchayat.

5. When a dispute has been raised by all the contesting parties to the *lis*, i.e. the revision petitioner claims that it is a patta land and according to the fifth respondent, it is a gifted land and it is in continuous usage as pathway. The



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learned Additional Government Pleader appearing for the official respondents represents that patta stands in the name of the vendor of the revision petitioner and it is in the usage of public as pathway.

6. Admittedly, the revision petition is filed as against the dismissal of IA seeking for appointment of an Advocate-Commissioner to examine the nature of the property and to file a report and the said application was negatived by the trial court, taking into consideration that the said application was filed belatedly and if the same is allowed it will give a different cause of action and it will defeat the on-going trial.

7. In the interest of justice, when a dispute is raised with regard to possession or occupation or classification of a land, it is appropriate that an Advocate-Commissioner be appointed, who in turn may give opportunity to all the parties and with the aid of the revenue authorities, namely the Surveyor, the property may be examined and a report on the same will be placed before the court. The court will take cognizance of the report and the documents annexed therewith and a finding will be given by the trial court. The parties to the suit are entitled to challenge the report, if they finds that the report is not in accordance



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with law and if any report or finding given by the Advocate Commissioner, is subjected to challenge and such proposition, is left open to the respective parties.

Therefore, in view of the same, the order passed by the trial court is hereby set aside and the trial court is directed to appoint an Advocate-Commissioner to visit the schedule mentioned premises in the suit and file a report within a period of two months from the date of receipt of a copy of this order and to proceed with the trial in accordance with law. Since the suit is of the year 2016, the trial court is directed to complete the trial within a period of one year including the period of report to be filed by the Advocate-Commissioner.

8. With the above observation, the civil revision petition is disposed of. No costs. Consequently, the connected civil miscellaneous petition is closed.

17.04.2025

Index : Yes / No

Neutral Citation : Yes / No

Asr

To

I Additional District Munsif Court, Kallakurichi.

N.SENTHILKUMAR, J.



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