

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Wednesday, the Twenty Third day of February Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE C.V.KARTHIKEYAN

CRP(PD).NO.1567 OF 2017

AND CMP.NO.7324 OF 2017

RAMASAMY

[PETITIONER IN BOTH THE PETITIONS]

Vs

1 KANDASAMY

[RESPONDENTS IN BOTH THE PETITIONS]

2 PALANISAMY

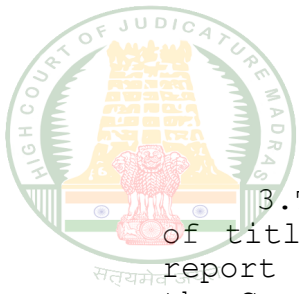
Petitions under Article 227 of the Constitution of India filed against the Order and decreetal order in I.A.No.477/2016 in O.S.No.110 of 2007, on the file of District Munsif, Attur dt.07.10.2016. (in CRP(PD).NO.1567 OF 2017) and;

(ii) To STAY all further proceedings in O.S.110/2007 on the file of the District Munsif, Attur (in CMP.NO.7324 OF 2017) pending disposal of the above CRP(PD).NO.1567 OF 2017.

Order : This petition and miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.SRIPRIYA, Advocate for M/S.V.RAGHAVACHARI, Advocate for the petitioner in both the petitions and of on behalf of the Respondents the court made the following order:-

The suit was originally filed seeking injunction with respect to a pathway. There were two defendants / father and son. The defendants filed a written statement, questioning the nature of the land described as pathway. A further plea was taken questioning the title of the plaintiff to seek an order of injunction. The said written statement was filed in the year 2007.

2. Thereafter, an Advocate Commissioner appears to have visited the property and filed a report in which, the Advocate Commissioner had stated that the pathway lies within the land of the defendants. The plaintiff then filed an application seeking declaration and title.



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3.The plaintiff should file an application seeking declaration of title on the basis of their title and not on the basis of the report of an Advocate Commissioner, which report is only to assist the Court.

4.It must be kept in mind that the suit was only for injunction and that scope cannot be widened primarily on the report of a 3rd party / Advocate Commissioner. If the Advocate Commissioner had extended his warrant then, he can very well be cross-examined during the course of the Trial.

5.One of the respondents herein appears to have died but is survived by another respondent, who is his legal heir.

6.If the written statement was the basis for filing application seeking declaration of title then the application seeking amendment was filed far far later from the date of filing the written statement.

List the matter on 09.03.2022.

-sd/-

23/02/2022

/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

THE DISTRICT MUNSIF,
ATTUR.

Order

in
CRP(PD).NO.1567 OF 2017

AND CMP.NO.7324 OF 2017

Date :23/02/2022

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
DPK(28/02/2022)