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C.R.P. (NPD) .No. 623 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.03.2023

Delivered on : 24.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.(NPD).No.623 of 2021
and C.M.P.No.5354 of 2021

Anbumani

.. Petitioner

Vs.

1.Chockalingam

2.Mani (Died)

3.Vairammal

4.Chitra

5.Vasanthi

6.Mariyappan

[R3 to R6 brought on record as
LRs of the deceased 2nd respondent
vide order dated 13.08.2021 made in
CMP.No.10671 of 2021]

.. Respondents

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PRAYER: Civil Revision Petition filed under Section 115 of the Code of Civil Procedure, praying to set aside the fair and decretal order dated 12.12.2019 made in I.A.No.1 of 2019 in A.S.No.33 of 2017 passed by the learned Additional District Judge, Mayiladuthurai and allow this Civil Revision Petition.

For Petitioner : Ms.M.Abirami

for Mr.M.B.Kuyilan

For Respondents : Mr.B.Jawahar for R1, R3 to R6

R2 – Died (Steps taken)

ORDER

The learned Counsel for the Revision Petitioner would submit that the Revision Petitioner is the Plaintiff in the suit in O.S.No.190 of 2015. The suit was dismissed after full trial. Aggrieved by the dismissal of the suit, the Plaintiff had preferred an Appeal in A.S.No.33 of 2017 on the file of the Additional District Judge, Mayiladuthurai. During the pendency of the Appeal, the Appellant had filed I.A.No.1 of 2019 in A.S.No.33 of 2017 seeking appointment of Advocate Commissioner to measure the suit property. The Respondents/ defendants in the suit in O.S.No.190 of 2015 as the respondents in I.A.No.1 of 2019 have filed a counter resisting the same.

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After due enquiry, the I.A.No.1 of 2019 in A.S.No.33 of 2017 was dismissed by the learned Additional District Judge, Mayiladuthurai as per the order dated 12.12.2019. Aggrieved by the same, the Plaintiff before the Trial Court, the Appellant in the Appeal in A.S.No.33 of 2017 had approached this Court against the order of dismissal in I.A.No.1 of 2019 in A.S.No.33 of 2017. It is the contention of the learned Counsel for the Revision Petitioner that the petitioner is a woman, exploiting her absence from the suit property, the neighbor who is the Defendant had encroached on the property of the Petitioner. The Petitioner's father was issued with patta for the suit property.

2. The learned counsel for the Petitioner invited the attention of this Court to the averments in the Plaint, copy of the Plaint, copy of the Written Statement, copy of the Judgment in O.S.No.190 of 2015, memo of grounds of Appeal in A.S.No.33 of 2017 on the file of the Additional District Judge, Mayiladuthurai, copy of the affidavit and petition in I.A.No.1 of 2019 in A.S.No.33 of 2017 on the file of the learned Additional District Judge, Mayiladuthurai, counter filed by the respondents in I.A.No.1 of 2019 in



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AS.No.33 of 2017, fair and decreetal order passed in I.A.No.1 of 20119.

The copies of these were filed as typed set along with the petition. The learned counsel for the Revision Petitioner invited the attention of this Court to the portion of the judgment rejecting the contention of the Petitioner as Plaintiff, which reads as follows:-

மேற்படி நடேச படையாச்சி பெயரில் புல எண் 227ல் 10 சென் நிலம் 25.9.1932ல் கிரயம் வாங்கப்பட்டது என்பதற்கு எ.வா.சா.ஆ1 இந்நீதிமன்றத்தின் முன்பு முன்னிலைப்படுத்தப்பட்டுள்ளது. அதனைத் தொடர்ந்து செண்பகவள்ளி அம்மாள் பெயரில் ஏற்பட்ட செட்டில்மென்ட் ஆவணம் வ.வா.சா.ஆ2 ஆக இந்நீதிமன்றத்தின் முன்பு முன்னிலைப்படுத்தப்பட்டுள்ளது. மேற்கண்ட எ.வா.சா.ஆ1 மற்றும் 2இல் கண்ட சொத்துக்களானது புல எண்ட 227வட உட்பிரிவு செய்வதற்கு முன்பாக ஏற்பட்ட ஆவணங்கள் என்பது தெரியவருகிறது. மேற்கண்ட ஆவணங்களில் கண்ட சொத்து விபரங்களும், கூாக்கில் கண்ட சொத்துக்கும் உள்ள நான்கெல்லைகளில் இரண்டுபுறம் ஒத்துபோவதாக அமைந்துள்ளது. மற்ற இரண்டு புறத்தைப் பொறுத்து எதிர்வாதிகள் தரப்பில் தெளிவு இல்லை. அதனை முன்னிறுத்தி தான் வாதி தரப்பில் எ.வா.சா.ஆ1 மற்றும் தாவா சொத்துக்குரியதில்லை என மறுக்கப்பட்டுள்ளது.



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10. மேலே கண்டவாறு எதிர்வாதிகள் தரப்பில் தாவா சொத்தைப் பொறுத்து உரிமை மூலம் கொண்டு வந்துள்ளபோதிலும் அவர்கள் தரப்பில் தாவா சொத்துக்கான உரிமை மூலம் முறைப்படி எடுத்துரைக்கப்படவில்லை என்பதாக வைத்துக் கொண்டாலும்கூட அதன் காரணமாகவே தாவா கொத்து இந்த வாரியனின் தகப்பனாருக்க அரசால் வழங்கப்பட்ட பட்டாவின் மூலம் பாத்தியப்பட்டதாக கருத இயலாது. அவ்வாறான சூழ்நிலையில் தாவா கொத்து வாதியின் தகப்பனான தொடர்ந்து அனுபவத்தில் இருந்து வந்து அதனடிப்படையிலேயே வா.சா.ஆ.2 பட்டா வாதியின் தகப்பனாருக்கு அரசால் வழங்கப்பட்டது என்பதை வாதி இந்நீதிமன்றத்தின் முன்பு நிரூபணம் செய்யவேண்டும். அவ்வாறான சூழ்நிலையில் தான் தாவா சொத்தில் உரிமை மற்றும் அனுபவத்தை முபமையாக அறிந்த இந்த வாதியானவர் இந்நீதிமன்றத்தின் முன்பு அதாவது சாட்சியாக முன்னிறுத்தி விசாரிக்கத் தவறிவிட்டார். முன்னதாக முதல் விசாரணைக்கு முன்னிலையாகி ஆவணங்களை குறியீடு செய்தபோதிலும் பின்னிட்டு அதனை ரத்து செய்து விட்டு அவருடைய கணவரான வா.சா.1ஐ நீதிமன்றத்தின் முன்பு சாட்சியாக முன்னிறுத்தியுள்ளார். வாதியின் இந்த செயல்பாட்டை இந்நீதிமன்றம் பரிசீலிக்கும்போது தாவா சொத்தைப் பொறுத்து உண்மை விபரம் வெளியே தெரிந்துவிடும் என்பதாலேயே இந்த



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வாதி நீதிமன்றத்தின் முன்பு சாட்சியம் அளிக்க தவறிவிட்டார்
என்றே இந்நீதிமன்றம் கருதுகிறது.

3. He also invited the attention to the order of the learned Additional District Judge in I.A.No.1 of 2019 in A.S.No.33 of 2017,

ஒரு வழக்கு முழு விசாரணைக்கு பின் தீர்க்கப்பட்டபின்னர்
மேல்முறையீட்டு நீதிமன்றத்தில் புதிய சாட்சியம், கானற்களை
முன்னிட்டு வளக்கமளிக்க முற்படும்போது அத்தயை
நடவடிக்கைகளை விசாரணை நீதிமன்றத்திரேயே ஏன்
மேற்கொள்ளவில்லை என்பதற்கான விளக்கத்தையும் புதிய
சான்றுகள் மற்றும் ஆணையர் அறிக்கையின் மூலமாக மட்டுமே
மேல்முறையீட்டை தீர்க்க இயலும் என்பதையும் நீதிமன்றம் உள
நிறைவு கொள்ளத்தக்க வகையிலும் கூற வேண்டும். இம்மனுவில்
அது போன்ற விளக்கம் ஏதும் இல்லை. ஆகையால் சாட்சியங்கள்
சேகரிப்பதற்காகா ஆணையர் நியமிக்க இயலாது. ஆணையர்
அறிக்கையின்றியே மேல்முறையீட்டை தீர்க்க இயலும் என்ற நிலை
இருப்பதால் மனு அனுமதிப்பதால் வீண் காலதாமதம் ஏற்படும்.
அத்துடன் ஆணையர் நியமித்தால் வழக்கின் தீர்வுக்குரிய
பிரச்சனையிலிருந்து விலகி வேறு பல பொருண்மைகள் குறித்து



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ஆய்வு செய்யும் நிலை ஏற்படலாம். எனவே, முனு

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அனுமதிக்கத்தக்கதல்ல என தீர்மானிக்கிறேன்.

4. Aggrieved by the same, the appellant before the learned Additional District Judge and the petitioner in I.A.N.1 of 2019 in A.S.No.33 of 2017 had preferred the Civil Revision Petition seeking to set aside the order of the learned Additional District Judge.

5. Further the learned counsel for the Revision Petitioner submitted that the suit was filed for the relief of recovery of possession. Therefore, it is necessary to appoint an Advocate Commissioner to identify the encroachment made by the respondents and it was not an attempt to gather evidence.

6. While so, to establish her case, the Plaintiff had filed this Interlocutory Application, which was dismissed by the Appellate Judge based on the objections of the learned Counsel for the Respondents that the Advocate Commissioner appointment is sought by the Appellant only to



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collect evidence. It is the further contention of the learned Counsel for the Revision Petitioner that the Advocate Commissioner shall be appointed to note down the physical features based on the documents of the Appellant/Plaintiff and Respondents/ Defendants. The facts claimed in the Appeal can be proved through the evidence. Therefore, the learned Counsel for the Revision Petitioner seeks to set aside the order of dismissal of the IA.No.1 of 2019 in A.S.No.33 of 2017 by the learned Additional Judge, Mayiladuthurai.

7. The learned counsel for the Respondents vehemently objected to the line of arguments of the Revision Petitioner stating that the Defendants in the suit in O.S.No.190 of 2015 claims title to the property through two sale deeds of the years 1932 and 1941. It is the specific case of the Defendants that they have been enjoying the property as per the sale deeds with specific boundaries. It is the contention of the learned Counsel for the Respondents that the claim of the Plaintiff in O.S.No.190 of 2015 was based on the patta issued to the father of the Plaintiff. It is his further contention that the patta in favour of the father of the Plaintiff was cancelled by the

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Revenue Authorities. The Plaintiff has to come to the Court with a specific case, the Plaintiff cannot seek to get a decree by pricking holes in the evidence of the Defendants. After full trial, since the Plaintiff was unable to prove his contention through proper evidence, on assessment of the evidence, the learned trial Judge had dismissed the suit for recovery of possession.

8. The learned counsel for the respondents also placed reliance on the order dismissing the I.A.No.1 of 2019, which was cited by the learned counsel for the Revision Petitioner in paragraph No.3 above. The learned counsel for the Respondents also invited the attention of this Court to the portion of the judgment of the learned Sub-Judge, Mayiladuthurai dismissing the suit in O.S.No.190 of 2015 filed by the Plaintiff.

வா.சா.ஆ.7ஐ இந்நீதிமன்றம் பரிசீலிக்கும் போது சாமிக்கண்ணு
மகன் காசிநாதன் என்பவர் தொடக்க வேணாண்மை கூட்டுறவு
வங்கிக்கு எழுதிக் கொடுத்த அடமான ஆவணம் என்பது அதனை
பரிசீலிக்கும்போது தெரியவருகிறது. இந்த சூழ்நிலையில் தாவா
சொத்து விபரத்தே இந்நீதிமன்றம் பரிசீலிக்கும்போது புல



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எண்களில் அடித்தல் திருத்தல் காணப்படுகிறது என்பது தெரியவருகிறது. இந்த சூழ்நிலையில் அந்த ஆவணத்தில் கண்ட அந்த சொத்துக்குரிய நான்கெல்லையை இந்நீதிமன்றம் பரிசீலிக்கும்போது தகாவாசொத்தின் நான்கெல்லையுடன் அத்துகோகவில்லை என்பது தெரியவருகிறது. அதன் காரணமாகவே மேற்கண்ட புல எண்ணைப் பொறுத்து அடித்தல், திருத்தல்களை இந்நீதிமன்றம் இங்கு கவனத்தில் கொள்ளவேண்டிய அவசியம் ஏற்பட்டுள்ளது. மேலும், கூாதி தன்னுடைய வழக்குரையில் கூறும்போது தாவாசொத்தை இந்த வாதியின் தகப்பனார் காலி மனையாக வைத்தே அனுபவித்து வந்ததாக கூறப்பட்டுள்ளது. மாறாக வா.சா.ஆ.7ல் 80 வயதுடைய வீடு கதவு எண் 2/86 என அமைந்துள்ளதாக சுட்டிக் காட்டப்பட்டுள்ளது. அதனடிப்படையை நோக்கும்போது வா.சா.ஆ.7 உண்மை தன்மை அடிப்படையில் ஏற்படவில்லை என்றே இந்நீதிமன்றம் கருதுகிறது. ஒரு சொத்தைப் பொறுத்து ஒருவர் மற்றொருவருக்கு அடமானம் எழுதிக் கொடுத்து விட்டார் என்ற ஒரே காரணத்தால் மட்டுமே அந்த சொத்தில் அவருக்கு உரிமை ஏற்பட்டதாக கருத இயலாது. அதில் அவருக்கு எவ்வாறு உரிமை ஏற்பட்டது என்பதை இந்நீதிமன்றத்தின் முன்பு ஏற்கத்தக்க வகையில நிரூபணம் செய்யவேண்டும். அதனை நிரூபிக்கும்விதமாக வாதி தரப்பில்



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இந்நீதிமன்றத்தின் முன்பு எவ்வித ஆவணங்களும் முன்னிலைப்படுத்தப்படவில்லை. அவ்வாறான சூழ்நிலையில் தான் வாதியின தகப்பனார் பெயரி ஏற்பட்ட வா.சா.ஆ2 ஐ ரத்து செய்து எ.வா.சா.ஆ4ன் அடிப்படையில் மயிலாடுதுறை, கூரவாய் கோட்டாட்சியர் அவர்கள் உத்தரவு பிறப்பித்துள்ளார் என்பதும், ஆதனைத் தொடர்ந்து 1வது எதிரவாதி பெயருக்கு தாவா சொத்தைப் பொறுத்து பட்டா பதிவு ஏற்பட்டுள்ளது என்பது எ.வா.சா.ஆ3ன் அடிப்படையில் தெரிய வருகிறது. அதாவது இந்த வழக்கு நிலுவையில் உள்ள காலத்தில் வா.சா.ஆ.2 ரத்து செய்யப்பட்டுவிட்டது என்பது தெரியவருகிறது. எனவே, ருத்து செய்யப்பட்ட ஒரு ஆவணத்தின் அடிப்படையிலேயே வாதியால் தற்போது வழக்கு நிலைநிறுத்தப்பட்டுள்ளது. மயிலாடுதுறை, கூரவாய் கோட்ட அலுவலர் உத்தரவின் அடிப்படையில் மேல்முறையீடு செய்திருப்பதாக வாதம் எடுத்துரைக்கப்பட்டு அது எதிர்வாதிகளால் ஒப்புக் கொள்ளப்பட்டிருந்த போதிலும் ஒரு ரத்து செய்யப்பட்ட ஆவணத்தின் அடிப்படையில் உரிமை கோரியுள்ள செயல்பாடானது ஏற்கத்தக்கதில்லை என இந்நீதிமன்றம் மடிவுக்கு வருகிறது.



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WEB COPY 9. Aggrieved by the same, the plaintiff had filed an appeal in A.S.No.33 of 2017. During the pendency of the appeal, the petition for appointment of Advocate Commissioner has been filed. It is the further contention of the learned Counsel for the Respondents in the Appeal and the Respondent in the Civil Revision Petition that in the petition filed in the Appellate Court seeking appointment of Advocate Commissioner, the Appellant/ Plaintiff had filed the following list of documents:

LIST OF DOCUMENTS FILED BY THE PETITIONER

01.	18.09.2016 Natham A register	True copy
02.	18.09.2019 Natham Chitta	True copy
03.	18.09.2019 Natham adangal	True copy
04.	18.09.2019 F.M.B.sketch for R.S.No.226, 227	True copy
05.	30.11.1929 Partition deed entered into between Ponnusamy and Kandasamy	S.R.O Copy

10. All the documents related to the Defendants. The Plaintiff had not at all filed any document in support of the Plaintiff's case before the Trial Court. Whereas, they had introduced these documents in the Appeal.



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Also the learned Counsel for the Respondents submit that during the trial before the Trial Court, the Petitioner herein as Plaintiff had preferred another Petition earlier for appointment of Advocate Commissioner which was also dismissed. The Plaintiff did not file an Appeal or Revision against the dismissal of the said petition for appointment of Advocate Commissioner. Suppressing the same, now in the Appeal, for the second time, the Advocate Commissioner appointment had been sought. On enquiry the learned Additional District Judge, Mayiladuthurai had rightly dismissed the application seeking appointment of Advocate Commissioner, as it is nothing but an exercise to collect evidence during the pendency of the Appeal. Therefore, the well reasoned order of the learned Additional District Judge, Mayiladuthurai does not warrant any interference by this Court exercising discretion under Article 227 of the Constitution of India. Therefore, this petition has no merits and it has to be dismissed.

11. By way of rejoinder, the learned Counsel for the Revision Petitioner would submit that the Plaintiff's father died in 2004 and the claim of the Respondents that the patta in favour of the father of the Revision

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Petitioner was cancelled only during the pendency of the suit before the Trial Court, against which the Revision Petitioner/ Plaintiff herein filed a representation before the Revenue Authorities also. It is her contention that the proceeding by the Revenue Divisional Officer states that the father of the Revision Petitioner was enquired into before conducting enquiry and passing orders cancelling patta. The order of the Revenue Divisional Officer is dated 2016, whereas the father of the Plaintiff died in 2004. Therefore, the proceeding of the Revenue Authority itself is questionable.

Point for consideration:

Whether the order of dismissal of the I.A.No.1 of 2019 in A.S.No.33 of 2017 on the file of the learned Additional District Judge, Myiladuthurai dated 12.12.2019 is to be set aside?

12. On consideration of the rival submissions, it is found that the Plaintiff has to establish the case through proper evidence. It is the contention of the learned Counsel for the Revision Petitioner that the Advocate Commissioner is to be appointed to measure the property and find

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out the encroachment by the Respondents. The Respondents are the neighbours. It is the specific case of the Petitioner that the Respondent had encroached on the Petitioner's property. The Petitioner is in enjoyment of the property through Natham land for which patta was granted in favour of the Petitioner's father.

13. The contention of the learned Counsel for the Respondents that the patta in favour of the Revision Petitioner's father was cancelled had been disputed by the Petitioner stating that the Petitioner's father died in the year 2004. As per the proceeding of the Revenue Authorities it was shown as though the Petitioner's father attended the enquiry and the proceedings had been passed by the Revenue Authorities. When the father of the Plaintiff/ Petitioner herein died in 2004 and cancelling the patta for the suit property as though the father of the Petitioner herein attended the enquiry and creating records by the Revenue Authorities is found unfair.

14. The learned Counsel for the Petitioner had in the course of the arguments, by way of reply to the learned Counsel for the Respondents

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submitted that the Death Certificate of the Petitioner's father in which the date of death is shown as 03.10.2004. While so, the proceedings of the Revenue Divisional Officer, Mayiladuthurai by the proceeding in ப.மு.0453/2016/அ3 is dated 12.07.2016.

15. When the suit had been instituted by the Plaintiff for recovery of possession, on appreciation of evidence it had been dismissed. During the pendency of the suit between the Plaintiff and the Defendants, the Revenue Divisional Officer, Mayiladuthurai cancelling the patta issued in favour of the father of the Petitioner Kasinathan, is found unfair. Thus, in these circumstances, the contention of the learned Counsel for the Respondents that the patta in favour of the father of the Petitioner having been cancelled cannot be accepted. On a perusal of the order passed by the Revenue Divisional Officer, Mayiladuthurai cancelling the patta in favour of the father of the Petitioner is found un-acceptable behind the back of the Petitioner. In the absence of the Petitioner from the suit property, the Respondents have preferred a petition to the Revenue Divisional Officer



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seeking cancellation of patta in Natham S.No.227/4 for 0.402 sq.m.

Therefore, the contention of the learned Counsel for the Respondents that the patta was cancelled will not hold good. The Respondents had played mischief and fraud behind the back of the Revision Petitioner.

16. The other point of consideration that an earlier Interlocutory Application was filed for appointment of Advocate Commissioner during the pendency of the suit before the learned Judge which was also dismissed against which the Plaintiff in O.S.No.109 of 2015 did not prefer any Appeal or Revision and it had attained finality. While so, after the suit was dismissed Appeal is pending before the learned Additional District Judge, Mayiladuthurai. Again the Plaintiff as Appellant had preferred IA.No.1 of 2019 in A.S.No.33 of 2017 seeking appointment of Advocate Commissioner cannot be accepted is found un-acceptable.

17. The contention of the learned Counsel for the Revision Petitioner that the Respondents have encroached into the Petitioner's property is found justified from the fact that the Respondents herein have filed a petition for

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cancellation of patta in the name of the Petitioner's father Kasinathan who was already dead by the time, the patta was cancelled without issuing notice to the legal heirs of Kasinathan. The proceedings of the Revenue Divisional Officer as though notice was served on Kasinathan, a person died in 2004 and as though enquiry conducted is found unfair and un-acceptable.

18. In the light of the fact that the proceedings of the Revenue Divisional Officer is based on the petition for cancellation of patta by the Defendants in the suit in OS.No.190 of 2015. Therefore, the submissions of the learned Counsel for the Revision Petitioner as the Plaintiff in O.S.No.190 of 2015 on the file of the learned Additional Sub-Judge, Mayiladuthurai and who is the Appellant in A.S.No.33 of 2017 is found acceptable. The Plaintiff claims encroachment. When there is encroachment, Advocate Commissioner has to be appointed to verify the land. In the light of the patta having been cancelled, the encroachment claimed by the Plaintiff as per patta is justified. The proceeding of the Revenue Divisional Officer cancelling the patta for 0.402 sq.m in S.No.227/4 on the basis of the petition preferred by the 2nd respondent in the



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suit viz., Mani is found mischievous and fraudulent. Therefore, the contention of the learned Counsel for the Respondents that the Plaintiff had to stand or fall on the strength of the Plaintiff's own evidence cannot be accepted. When the plaintiff's father had been issued with patta for Natham property, which had been in enjoyment of the Plaintiff's father and in the absence of the Plaintiff and after the death of the Plaintiff's father the attempt of the 2nd Defendant seeking to cancel the patta is found unacceptable.

19. The District Collector, Mayiladuthurai is directed to enquire and look into the proceeding of the Revenue Divisional Officer, Mayiladuthurai in டி.பி.0453/2016/அ3 is dated 12.07.2016 and also to send a report for appropriate action to the higher Authorities of the Revenue Department in the State, which amount to land grabbing. Since the appeal is pending before the learned Additional District Judge, Mayiladuthurai in A.S.No.33 of 2017, dismissal of IA.No.1 of 2019 is found un-reasonable, especially when the Plaintiff had made out a case that there had been encroachment by



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the neighbours. The properties had to be measured based on the patta issued to the father of the Plaintiff, which subsequently had been cancelled during the pendency of the suit, in the absence of Kasinathan and his daughter, by the petition preferred by the Defendants in the suit, during the pendency of the suit. Therefore, the contention of the learned counsel for the Respondents that the patta was cancelled cannot be accepted.

20. The order passed by the learned Additional District Judge rejecting the request of the petitioner to appoint an Advocate Commissioner to measure the suit property is found justified to find out encroachment. It is necessary that the Defendants' title deeds and the Plaintiff's father's patta in S.No.227/4 in his enjoyment 0.402 sq.m had to be measured with the help of Surveyor, with the help of Revenue Records. To prove the case of encroachment, it is very essential. Objection by the learned Counsel for the Defendants in O.S.No.190 of 2015 and the Respondents in A.S.No.33 of 2017 that the Petitioner is attempting to collect evidence, will not hold good in the light of the circumstances available in this case.

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21. In the absence of the Plaintiff from the suit property, after the death of the father of the Plaintiff in the year 2004, the patta in the name of the father of the Plaintiff Kasinathan having been cancelled as per the proceedings of Revenue Divisional Officer dated 12.07.2016, during the pendency of the suit before the learned Sub-Judge, Mayiladuthurai on the basis of the petition preferred by the 2nd defendant in O.S.No.190 of 2015 is found unfair, which cannot be accepted by any any Civil Court exercising discretion under the principles of fairness, equity and good conscience which governs the Civil Court.

22. In the facts and circumstances of the case, as available from the submission made by the learned Counsel for the Respondents as well as the learned Counsel for the Petitioner the objection of the learned Counsel for the Respondents that the Petitioner is attempting to gather evidence cannot be accepted as reasonable. To find out whether there is encroachment, it is necessary to appoint an Advocate Commissioner with the assistance of the Surveyor and with the assistance of the Village Administrative Officer along with the Revenue Records to enable the Petitioner to identify the

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property that was in enjoyment of her father as well as by her subsequent to the death of her father. For this the claim of the Defendants based on their title deeds will not help. The title deeds relied by the Defendants who had purchased the property in their possession has to be necessarily produced before the Advocate Commissioner for verification regarding encroachment. Therefore, the contention that the Plaintiff has to stand or fall on the strength of his or her evidence even though acceptable, is not the case as far as the circumstance available in this case.

23. It is the specific case of the plaintiff that in the absence of the Plaintiff and her father, the grama natham property in the name of the plaintiff father had been encroached by the Defendant who is the adjacent land owner. The proceedings of the Revenue Divisional Officer probabilise the case of the Plaintiff. The Defendant having given the petition for cancellation of patta in the name of the Kasinathan (father of Plaintiff) and which was allowed by the Revenue Authorities by unfair means as though Kasisnathan had attended the enquiry, a person who died in 2004 had attended the enquiry is found un-acceptable.

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24. Even though the District Collector, Mayiladuthurai is not a party before this Court, the documents furnished by the learned Counsel for the Revision Petitioner in this case during the course of the arguments regarding the death of the father of the Petitioner/ Plaintiff in O.S.No.109 of 2015 and the Appellant in A.S.No.33 of 2017 before the learned Additional District Judge, Mayiladuthurai is found suspicious. Therefore, the District Collector Mayiladuthurai has to conduct a detailed enquiry regarding the circumstances which lead to cancellation the patta, by the Revenue Divisional Officer, cancelling patta given to a person who died in 2004, as though he attended the enquiry is found un-acceptable.

25. In this case a grama natham patta has been issued to a person and he was in enjoyment of the grama natham land and after the death of the person the patta has been cancelled without giving notice to the deceased person's legal heirs, helping the neighbour who had encroached into that land. Regarding this cancellation of patta proceedings, a detailed enquiry has to be conducted by the District Collector, Mayiladuthurai and a report

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has to be sent to the learned Additional District Judge, Mayiladuthurai, who conduct the appeal in A.S.No.33 of 2017.

26. The learned Additional District Judge, Mayiladuthurai shall appoint an Advocate Commissioner who has not less than 10 years experience in the profession on the civil side, who has appearance before him or her to inspect the property with the help of the Taluk Surveyor and with the help of the Village Administrative Officer and pass appropriate orders in continuance of this order.

27. The learned District Judge is directed to dispose of the Appeal Suit in A.S.No.33 of 2017 only after the receipt of the enquiry report in the Appeal preferred by the Appellant herein regarding cancellation of patta and on the basis of the report of the Advocate Commissioner. In the light of the above discussion, the point for consideration is answered in favour of the Revision Petitioner and against the Respondents.

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28. Accordingly, this Civil Revision Petition is **allowed**. The order passed passed by the learned Additional District Judge, Mayiladuthurai dismissing the IA.No.1 of 2019 in AS.No.33 of 2017 on the objections of the learned Counsel for the Respondents/ Defendants is set aside.

29. The copy of this order to be furnished to the District Collector, Mayiladuthurai for appropriate action and follow up.

24.03.2023

dsa

Index : Yes/No

Internet :Yes/No

Neutral Citation : Yes/ No

Speaking order/ Non-Speaking order

To

1.The Additional District Judge,
Mayiladuthurai.

2.The District Collector,
Mayiladuthurai.

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SATHI KUMAR SUKUMARA KURUP, J.

dsa

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