

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.4318 of 2015

Kaliyaperumal .. Petitioner/Defendant-1

Vs.

Sivaji .. Respondent/Plaintiff

Prayer:- Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 03.09.2015 in I.A.No.1104 of 2015 in O.S.No.318 of 2004 on the file of the District Munsif Court, Jayankondam.

For Petitioner :Mr.R.Nalliyappan
For Respondent :Mr.T.S.Rajeev Gandhi
for M/s.NVS & Associates

ORDER

The Civil Revision Petition is filed against the fair and decreetal order dated 03.09.2015 in I.A.No.1104 of 2015 in O.S.No.318 of 2004 on the file of the District Munsif Court, Jayankondam.

2.The respondent herein as a plaintiff filed a suit in O.S.No.318 of 2004 for recovery of possession and also mandatory injunction in respect of Items 1 and 2 and permanent injunction in respect of Item No.3. The plaintiff's side evidence has been over and when the suit was posted for defendants' side evidence, the first defendant/revision petitioner has come forward with an application in I.A.No.1104 of 2015 for summoning the Tahsildar to produce A Register and revenue records pertain to suit S.No.555/5. The trial Court, after hearing both sides, dismissed the application, against which, the present revision has been preferred by the first defendant.

3.Learned counsel for the revision petitioner/first defendant submits that since the suit property has been purchased in the Court's auction, survey number has not been given. But he filed the suit on the basis of the sale certificate and delivery receipt. The revision petitioner herein has raised a plea that since no survey number has been given, the suit property is not properly identified. It is admitted by both sides that Advocate Commissioner was appointed and inspected the suit property and measured the same with the help of qualified surveyor and they found that survey

number of the suit property is 555/5. At that time, the defendant filed the document to show that S.No.555/5 is the Government property, in which, a fire station is there. To prove that S.No.555/5 not pertains to the suit property, examination of Tahsildar is necessary. That factum was not considered by the trial Court. Hence, he prayed for allowing the revision.

4.Learned counsel for the respondent/plaintiff submits that the revision petitioner has already filed an application in I.A.No.458 of 2012 to implead the Tahsildar as a party to the suit proceedings, which was dismissed, against which, the first defendant preferred C.R.P.No.3785 of 2014 before this Court. That C.R.P. was also dismissed stating that Tahsildar is not necessary party to the suit. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the materials available on record.

6.On perusal of the plaint pleadings, it reveals that the suit property has been purchased by the father of the plaintiff through Court's auction. The sale certificate and delivery receipt has been

marked. But survey number has not been mentioned. The Advocate Commissioner was appointed and he inspected the property and measured the same along with the qualified surveyor and filed his report. In that report, it was stated that suit property is situated in S.No.555/5. According to A register, S.No.555/5 is only a Government land, wherein, fire station is there.

7.Considering the aforestated circumstances of the case, I am of the view, for proper adjudication of the suit, examination of revenue official viz., Tahsildar is necessary. The order passed in C.R.P.No.3785 of 2014 dated 18.11.2014 is no way affect the rights of the first defendant/revision petitioner to summon the Tahsildar to prove his case. It is true, merely because the property is a Government property, examination of Tahsildar is not necessary. But in the case on hand, the respondent/plaintiff filed the document to show that the suit property is situated in S.No.555/5. Whereas A Register shows that fire station is situated in S.No.555/5. Under such circumstances, examination of Tahsildar is necessary to clarify the ambiguity. Therefore, the impugned order passed by the trial Court in I.A.No.1104 of 2015 is unsustainable and the same is liable to be set aside and it is hereby set aside.

8.In fine, the Civil Revision Petition stands allowed. The Tahsildar, Ariyalur Taluk, is directed to appear before the trial Court on the date fixed by the trial Court along with A Register pertains to the year 1984 and prior to 1984, field measurement book and other revenue records pertain to the suit property. Now the case is posted for examination of D.W.1. Therefore, the trial Court is directed to dispose of the suit in O.S.No.318 of 2004 within a period of two months from the date of receipt of a copy of this order. No costs.

14.12.2015

kj

Index:Yes/No

To

The District Munsif Court, Jayankondam.

R.MALA,J.

Kj

C.R.P(PD).No.4318 of 2015

14.12.2015