

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED 04.08.2015****CORAM:****THE HONOURABLE MR.JUSTICE P.DEVADASS****C.R.P (MD) No.2471 of 2011****and****M.P (MD) No.1 of 2011**

1.A.Ramalingam
2.R.Ponnusamy
3.R.Rengasamy
4.P.Subbaiah
5.S.Ayyakannu
6.S.Armugam

.. Petitioners/Petitioners/Appellants

-vs-

A.P.Chinnathambi @ Chidambara Bharathi

.. Respondent/Respondent/Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order and decreetal order passed in I.A.No.45 of 2011 in A.S.No.66 of 2010 dated 19.08.2011 on the file of the Subordinate Court, Pudukottai.

For Petitioners : Mr.S.Natarajan

For Respondent : Mr.G.Sridharan

ORDER

This Civil Revision Petition arises out of the dismissal of I.A.No.45 of 2011 in the Appeal Suit in A.S.No.66 of 2010 on the file of the learned Subordinate Judge, Pudukottai, which has been filed for appointment of an Advocate/Commissioner.

2. The suit in Original Suit No.120 of 2007 has been laid before the Principal District Munsif's Court, Pudukottai by the respondent/plaintiff for declaration that the property covered in Ex.A.3-sale deed dated 10.09.1957 belongs to him and also for consequential injunction.

3. The suit has been resisted by the revision petitioners/defendants filing written statement that they have acquired title to the property under Exs.A.4 and A.5-sale deeds and they were also issued patta.

4. The respondent/plaintiff won the case. The revision petitioners/defendants appealed to the next Appellate Court by A.S.No.66 of 2010.

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5. Pending consideration of the Appeal Suit, the defendants filed I.A.No.45 of 2011 to appoint an Advocate/Commissioner to measure the suit



property with the assistance of Taluk Surveyor.

6. The application was dismissed as there is no dispute as to the identity of the property.

7. The learned counsel appearing for the revision petitioners/defendants would contend that in view of the complications arising out of the sale deeds and the connected revenue records, it becomes necessary to particularize the property mentioned in the plaint schedule with reference to the title deeds.

8. The learned counsel for the revision petitioners/defendants also would submit that noting down such physical features will help the both sides.

9. The learned counsel for the petitioners would further submit that these matters cannot be brought to the notice of the Court by oral evidence. Thus, the dismissal of this I.A is not in accordance with law.

10. On the other hand, the learned counsel for the respondent/plaintiff tried to sustain the impugned order by submitting that the order is perfectly correct. The apprehension of the respondent/plaintiff is that the revision petitioners/defendants trying to have an enquiry through an Advocate/Commissioner with reference to the patta.

11. The learned counsel for the respondent/plaintiff would further submit that in the face of sale deeds, this patta will put into insignificance. He would urge that vendor for both is one and the same and the vendor has sold the property in piece-meal to both.

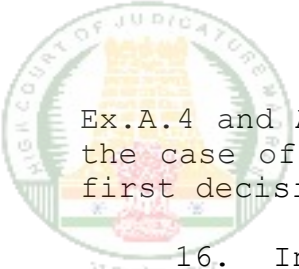
12. I have anxiously considered the rival submissions, perused the materials on record and also the impugned order.

13. In appointing an Advocate/Commissioner, the Court should exercise its judicial discretion and it can consider and significance the matters such as physical features of the property through oral could also be ascertained by such physical features can be brought by a report of an Advocate/Commissioner. If it is just and necessary that to resolve the controversy, the Court can seek the assistance of an Advocate/Commissioner. But appointment of an Advocate/Commissioner cannot be used as an attempt to collect evidence. There are circumstances where because of the sale deeds and the measurements mentioned in the property schedule difficulty may arise with regard to ground relating namely the actual measurement of the property. Such matters cannot be explained to the Court by witnesses. Now, in this case, there is no dispute as to the identity of the property. It is nobody's case. The actual focus is on Ex.A.3-sale deed and the defendants side title deeds, namely, Ex.A.4 and A.5.

14. It is pertinent to note that the respondent/plaintiff's document Ex.A.3 contains boundaries and measurements. In the plaint schedule, suit property has been mentioned with the boundaries and the measurements. Now the defendants in his written statement mentions Exs.A.4 and A.5 as their sheet anchor incidentally mentioned about the patta.

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15. It is pertinent to note that the measurements in Ex.A.3, the measurements given in the plaint schedule and the measurements given in



Ex.A.4 and A.5 together with their boundaries are significant to consider the case of the parties. They will enable the Appellate Court to make a first decision in this case.

16. In the circumstances, the impugned order of the learned Subordinate Judge, Pudukottai passed in I.A.No.45 of 2011 in A.S.No.66 of 2010 is set aside. The first Appellate Court will appoint an Advocate/Commissioner, who will measure the property described in the plaint schedule and to measure the extent given in Exs.A.3, A.4 and A.5- sale deeds with the help of the Taluk Surveyor. Reasonable fee shall be fixed for the Advocate/Commissioner. It is made clear that the Commissioner need not take into account the patta involved in this case.

17. Accordingly, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

ps

To

The Subordinate Judge, Pudukottai.
+1CC to Mr.G.Sridharan ADV.Sr.No.44201
+1CC Mr.S.Natarajan ADV.Sr.No.44128

GJM 27.8.15-3P-4C

C.R.P (MD) No.2471 of 2011
Dated: 04.08.2015