



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/2/2015

C O R A M

WEB COPY

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD(MD) No.2695 of 2014
and MP(MD)No. 1 of 2014

1. R. Sundara Rajan
2. R. Jeyapaul
3. R. Kannan ...Petitioners

Vs

P. Ayyappa Samy ...Respondent

Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 26/11/2014 made in I.A.No.573 of 2014 in O.S.No.304 of 2013 on the file of the District Munsif Court, Aruppukottai.

For petitioners ... Mr.S.Parthasarathy

For respondent ... Mr.J.Barathan

- - - - -

O R D E R

The plaintiff in O.S.No.304 of 2013 has filed an application to appoint a Commissioner to demarcate the properties in dispute which was allowed. Aggrieved by the same, the defendants had preferred the above revision.

2. The suit itself is filed to fix and locate the boundaries and the extent of the plaintiff's property in respect of the property measuring an extent of 1.44 cents comprised in S.No.116/1 etc., in the presence of the defendant with the help of the Town Surveyor and correlation with the revenue records.

3. The plaintiff/respondent had contended that the defendants had stated that the subject matter of the suit property claimed by the defendants is different from that of the documents. The defendants also had claimed right by prescription over the suit property. As the suit itself is for demarcation, it would be useful to appoint a Commissioner to survey and measure the properties of both the plaintiff and the defendants and demarcate the boundaries.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The suit application was contested by the defendants herein stating that the appointment of a Commissioner is only to gather evidence which is impermissible in Law.



5. The District Munsif, who had an occasion to hear both the parties, allowed the application appointing the Commissioner. Aggrieved by the same, this Civil Revision Petition has been filed.

6. The only question that has to be decided is whether the revision has to be allowed.

7. Heard the learned counsel for the parties.

8. The learned counsel for the petitioners/defendants contended that the suit would fall within the purview of Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923 and it is a statutory suit. It is also contended by the learned counsel for the petitioners that the Court fee was paid under Section 45 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955. If that is so, there cannot be a dispute regarding the identity of the property. Hence the appointment of Commissioner is unnecessary. It was also contended by the learned counsel that the plaintiff's property does not find place in the suit schedule and what is given is only the defendants property. Therefore, he is not entitled to the relief asked for.

9. Per contra, the learned counsel for the respondent contended that paragraph 5 and 6 of the plaint gives the description of the plaintiffs property and paragraph 8 gives the description of the defendants property. As the very suit itself is only for demarcation of the boundaries, the report of the Commissioner would only go a long way to assist the Court in adjudicating the matter in its proper perspective. The plaintiff was not intending to gather evidence as what is sought for is only to fix the boundaries of the properties with the help of the Surveyor in correlation with the revenue records. Being the suit for demarcation, it is evident that the plaintiff is not sure of his own boundary line. The plaintiff has not filed a suit for bare injunction where the Commissioner cannot be appointed. But this being a suit for demarcation, necessarily the Commissioner has to be appointed. The trial Judge who has the opportunity to consider the facts and the deposition of the parties, will be the best person to decide whether the Commissioner has to be appointed in a given suit.

10. The trial Court was satisfied with the request made by the respondent for the appointment of the Commissioner. The Court which is concerned with the adjudication of the issue before it is the best Judge to decide the need or necessity to appoint a Commissioner. If the Court is convinced and satisfied with the request, in the interest of Justice to both the parties, it can always appoint a Commissioner with a specific purpose.

11. As stated earlier, being a suit for demarcation, it is certainly necessary that the Commissioner be appointed to measure the suit property to fix the boundaries with the help of the Surveyor in consonance with the revenue records and more particularly with reference to the title deeds of the parties. Accordingly, bearing all these in mind, the trial Judge has appointed a Commissioner. If the Commissioner is not appointed in a suit for demarcation, the demarcation cannot be done only based on the documents of title. Therefore, I am unable to interfere with the order of the learned trial Judge as there is no material irregularity or infirmity in the order passed.



12. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

WEB COPY

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To
The District Munsif Court, Aruppukottai.

+1cc to Mr. S.Paathasarathy Advocate in SR.No. 6993

+1cc to Mr. T.R.Jeyapalam Advocate in SR.No. 7094

TS/24.02.2015/2P-4C

C.R.P.PD (MD) No.2695 of 2014

16.02.2015