

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 1.4.2016

CORAM

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.R.P.(PD) No.1745 of 2013

and

M.P.No.1 of 2013

M.Subramani

Petitioner

vs.

1. M.Vinayagam

2. Ponniyammal

Respondents

Civil Revision Petition under Article 227 of the Constitution of India against the fair and decretal order dated 22.8.2012 made in I.A.No.719 of 2012 in O.S.No.178 of 2010 on the file of the District Munsif Court, Tirutani.

For petitioner : Mr.D.Rajagopal

For respondents : Mr.S.Rajendrakumar for
M/s.Norton & Grant

ORDER

The revision has been filed as against the dismissal of an application taken out by the petitioner/plaintiff to appoint Assistant Director of Survey to survey the suit property and to file his report.

2. Heard Mr.D.Rajagopal, learned counsel appearing for the petitioner and Mr.S.Rajendrakumar, learned counsel appearing for the respondents.

3. It is seen that the petitioner and the first respondent are brothers. Their ancestral properties got divisioned by virtue of partition deed dated 25.11.2002. By the said partition deed, the petitioner was allotted 4.80 acres whereas the first respondent was allotted 5.35 acres.

4. Subsequent to the partition, the petitioner and the respondents entered into their share and they have been enjoying the properties. When things stand so, the petitioner approached the civil court seeking a declaration that he has got right, title and interest over the property to an extent of 2.10 acres and for permanent injunction restraining the first respondent herein from interfering with the possession, as the first respondent tried to encroach upon the property.

5. In the said suit, the petitioner also filed an application in I.A.No.774 of 2010 for appointment of surveyor to measure the property correctly. The Taluk Surveyor inspected the property on 11.12.2010 and filed a report stating that the petitioner/plaintiff himself encroached upon the property. Therefore, left with no option, the petitioner again filed I.A.No.719 of 2012 seeking a direction to appoint the Assistant Director of Survey to survey the suit property. The said petition was dismissed by the Trial Court stating that already

the Taluk Surveyor surveyed the property and there is a finding given by him that the petitioner encroached upon the property.

6. Though Mr.Rajagopal, learned counsel for the petitioner tries to drive home the point that the order passed by the Trial Court is not sustainable, this court is unable to accept the said contention. It is only at the instance of the petitioner the earlier application was taken out and the surveyor was directed to survey and file a report.

7. In view of above, though the civil revision petition is liable to be dismissed, taking into consideration the fact that the dispute is between the brothers, this court directed both of them to appear before this court and accordingly, they appeared before this court and this court convinced both of them to go for a joint survey by Taluk Surveyor, Thiruthani to survey all the properties which have been mentioned in the partition deed dated 25.11.2002 and demarcate the same. Accordingly, a joint memo has been filed by the petitioner as well as the respondent agreeing for appointment of Tahsildar to survey the property assisted by Revenue Inspector, Thiruthani.

8. Accordingly, this court, based on the joint memo filed by the parties, direct the Tahsildar, Thiruthani to be assisted by the Revenue Inspector, Thiruthani to survey all the properties which have been mentioned in the partition deed dated 25.11.2002 and to demarcate

the same. The survey and the consequential report of the Tahsildar will be final and binding on the parties since the entire dispute in the suit itself is with regard to the boundaries of the properties and the parties have agreed and only thereafter this court passed this order.

9. In view of the above, this court is of the view that there is no use in keeping the suit before the Trial Court pending any more and therefore, the suit in O.S.No.178 of 2010 on the file of the District Munsif Court, Tirutani is hereby, suo motu, exercising the power under Article 227 of the Constitution of India, withdrawn to the file of this court and the civil revision petition and the suit are disposed of in the above terms. No costs. The connected miscellaneous petition is closed.

1.4.2016.

Index: Yes/No.
Internet: Yes/No.
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To

District Munsif, Tirutani.

N.KIRUBAKARAN, J.

Ssk.

C.R.P.(PD)No.1745 of 2013

1.4.2016.