

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED: 21.04.2016**

**CORAM**

**THE HONOURABLE Mr. JUSTICE P.R.SHIVAKUMAR**

**C.R.P (PD) No.4833 of 2013**  
**and M.P.No.1 of 2013**

1. D.Saikumaran

2. K.S.Dasarathan

... Petitioners

vs.

1. T.R.Sulochana

2. The Regional Manager,  
The Bharat Petroleum Corporation Ltd,  
Anna Nagar, Chennai 40

3. The Territory Manager(installation)  
Tondiarpet Division,  
The Bharat Petroleum Corporation Ltd,  
Tondiarpet, Chennai 18

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 19.04.2013 passed in I.A.No.722 of 2013 in O.s.No.6 of 2008 by the learned Principal Subordinate Judge at Tambaram.

|                          |   |                    |
|--------------------------|---|--------------------|
| For Petitioners          | : | Mr.R.Thiagarajan   |
| For Respondent-1         | : | Mr.V.Raghavachari  |
| For Respondents 2 and 3: |   | Mr.P.G.Padmanabhan |

**ORDER**

This revision has been filed invoking the power of superintendence of the High Court over the Subordinate Courts under Article 227 of the Constitution of India questioning the legality of the order dated 19.04.2013 made in I.A.No.722 of 2013 in O.S.No.6 of 2008 pending on the file of the Sub Court, Tambaram. The defendants 1 and 2 in the above said suit are the petitioners in the Civil Revision Petition. The plaintiff is the first respondent and the defendants 3 and 4 are the respondents 2 and 3 in the Civil Revision Petition.

2. The suit was filed by the first respondent herein against the revision petitioners and respondents 2 and 3 herein for a declaration that the first respondent herein / plaintiff is the absolute owner of the suit property and for a permanent injunction restraining the defendants from in any manner installing any petroleum retail outlet either in whole or any part of the suit property and from interfering with the first respondent / plaintiff's alleged peaceful possession and enjoyment of the suit property. The first respondent in the Civil Revision Petition / plaintiff in the said suit, filed an application I.A.No.722 of 2009 praying for appointment of an Advocate Commissioner to note down the physical features of the suit

property, measures the same with the help of a qualified surveyor and submit a report and plan.

3. The learned trial Judge, after hearing, rejecting the objections raised by the revision petitioners herein, allowed the application and appointed an Advocate Commissioner by an order dated 19.04.2013 and the same is impugned in the present Civil Revision Petition.

4. After admission, notice was served on the respondents. The respondents 1 and 3 have entered appearance through Counsel. The arguments advanced by Mr.R.Thiyagarajan, learned counsel for the petitioners in the revision petition, by Mr.V.Raghavachari, learned counsel for the first respondent/plaintiff and by Mr.P.G.Padmanabhan, learned counsel for the second and third respondents are heard. The certified copy of the impugned order and copies of other material papers produced in the form of typed-set of papers are also perused.

5. It is the contention of Mr.R.Thiagarajan, learned counsel for the petitioners that the filing of an application for appointment of a Commissioner to inspect the suit property and measure the same with the assistance of a qualified surveyor is nothing but an attempt to

collect evidence in support of the case of the first respondent / plaintiff. It is his further contention that there is lack of *bona fide* on the part of the first respondent / plaintiff in filing such an application, since she filed an earlier suit and withdrew the suit without obtaining the leave of the Court to file a fresh suit. It is the further submission of Mr.R.Thiyagarajan, learned counsel for the petitioners that the learned trial Judge, without properly considering the intention of the first respondent / plaintiff and the *bona fide* or otherwise of the first respondent / plaintiff in filing the application seeking appointment of an Advocate Commissioner, allowed the said application and appointed an Advocate Commissioner to make local inspection of the suit property and measure the same with the assistance of a qualified surveyor.

6. It is the further submission of the learned counsel for the petitioners that the first respondent Sulochana filed two earlier suits in O.S.No.132 of 2006 and 169 of 2006 on the file of the District Munsif, Tambaram based on similar causes of action in respect of the very same property as if the second petitioner / second defendant Dasaratha Nadar, along with one Vijaya Kandeepan, tried to trespass into the suit property; that after it was brought to the notice of the Court that the said Vijaya Kandeepan died prior to the date of alleged

attempt to trespass and after applications were filed for rejection of plaints in those suits, the first respondent/plaintiff availed time for filing counter in those applications, but without filing any counter, withdrew the said suits without getting the leave of the Court to file a fresh suit in respect of the very same subject matter; that thereafter allowing a lapse of two years, she filed the present suit for declaration of her title and for injunction, without making any whisper about the earlier suits and that therefore, the filing of the suit itself can be construed as lacking in bona fide. Learned counsel for the petitioners would contend further that the petitioners as owners of the land had entered into a lease arrangement with Bharat Petroleum Limited in the year 2006; that the first respondent herein / plaintiff, who wanted to prevent the installation of the petroleum outlet, after failing in her attempt to get an order of injunction in the earlier suits and after withdrawal of the said suits, has made a further attempt to re-litigate the matter by filing the present suit O.S.No.6 of 2008. It is also his contention that in O.S.No.132 of 2006 on the file of the District Munsif, Tambaram, the first respondent herein got an order for appointment of an Advocate Commissioner, but failed to take the Advocate

Commissioner by making payment of remuneration ordered by the

Court and that thereafter the first respondent has made a similar attempt in the present suit filed after two years.

7. Per contra, it is the contention of Mr.V.Raghavachari, learned counsel for the first respondent/plaintiff that both the earlier suits came to be filed without the knowledge of the purchase made by the first petitioner herein / first defendant and without making him a party defendant; that only subsequently, he came to know about the purchase made by the first petitioner herein / first defendant and that only consequent to such knowledge, the said suits were withdrawn with the intention of proceeding with the case concerned in this revision petition. It is the further submission of Mr.V.Raghavachari, learned counsel for the first respondent that it is incorrect to say that the present suit O.S.No.6 of 2008 came to be filed after the withdrawal of two earlier suits O.S.Nos.132 of 2006 and 169 of 2006 and that on the other hand, the present suit O.S.No.6 of 2008 came to be filed in August 2006 itself before the Sub Court, Chengalpattu and numbered as O.S.No.183 of 2006 and that after the establishment a separate Sub Court at Tambaram, on the ground of jurisdiction, the said suit came to be transferred to the file of the Sub Court, Tambaram and re-numbered as O.S.No.6 of 2008.

8. A perusal of the copy of plaint included in the typed-set of papers and also a copy of the plaint produced by Mr.V.Raghavachari, learned counsel for the first respondent before this Court for its perusal, shows that the suit came to be filed in the Sub Court, Chengalpattu in August 2006 itself and only on transfer, it came to be numbered as O.S.No.6 of 2008 on the file of the Sub Court, Tambaram.

9. The revision petitioners in support of their contention that the earlier suits were withdrawn without the leave of the court and the present suit came to be filed as an attempt at re-litigation have produced the copies of the judgments in the earlier suits which are found at pages 66 and 68(a) and a clean copy of the judgment found at page 68a is found at Page 68.

10. A perusal of the same will show that O.S.No.132 of 2006 was filed by the first respondent for permanent injunction against one Vijayakandeepan and Dasaratha Nadar, the second petitioner in the present revision and that, the said suit came to be dismissed as not pressed on 22.09.2006. It will indicate that the present suit O.S.No.6 9 of 2008 (originally numbered as O.S.No.183 of 2006) came to be

filed before the dismissal of O.S.No.132 of 2006 as withdrawn. Similarly, O.S.No.169 of 2006 was filed by the first respondent herein on the file of District Munsif, Tambaram against the petitioners herein and the respondents 2 and 3 herein for bare injunction to restrain them from installing a petroleum retail outlet in the suit property in its entirety or in any part of it. The said suit was also dismissed as not-pressed on the very same day on which O.S.No.132 of 2006 was dismissed. It is also quite obvious that no leave to file a fresh suit on the same cause of action was obtained. However, since the present suit came to be filed earlier, the first respondent / plaintiff thought it fit not to seek the leave as he was of the view that the comprehensive suit would be proceeded with. It is also true that the first respondent / plaintiff has not referred to the filing of the earlier suits in the plaint in the present suit. However, the attempt made by the learned counsel for the petitioners to show that the present suit is nothing but an attempt at re-litigation of a *lis*, which had obtained finality by the withdrawal of the earlier suits without the leave of the Court, is bound to fail, because the present suit came to be filed much prior to the withdrawal of the other suits.

11. It is the contention of the learned counsel for the petitioners that the fact that the first respondent / plaintiff, after

obtaining an order of appointment of an Advocate Commissioner in O.S.No.132 of 2006, failed to pay the remuneration to the Commissioner and withdrew the suits, would show that the first respondent / plaintiff is indulging in forum shopping as an abuse of process of Court by filing an application in the present suit for the very same relief.

12. As an answer to the above said contention, Mr.V.Raghavachari, learned counsel for the first respondent/plaintiff would contend that since the other suits are for bare injunction and she had already filed the present suit as comprehensive suit for declaration and consequential reliefs, she thought it fit to proceed with the comprehensive suits and it cannot be considered as a forum shopping as contended by the learned counsel for the petitioners. It is the further submission of the learned counsel for the first respondent that since the purchase by Saikumaran was not known to the first respondent / plaintiff, which resulted in filing other two suits without making him a party, made the first respondent / plaintiff to withdraw those suits and proceed with the comprehensive suit, namely, the present suit in which Saikumaran has been made as a party defendant. Hence, the contention of the learned counsel for the petitioners that the present suit and the application for

appointment of a Commissioner will amount to re-litigation and forum shopping cannot be countenanced for the limited purpose of deciding whether the application for appointment of an Advocate Commissioner can be allowed or not.

13. In justification of the prayer for appointment of an Advocate Commissioner to inspect the suit property and measure the suit property with the help of a qualified surveyor, learned counsel for the first respondent / plaintiff has made the following submissions;

"A total extent of 2.9 acres comprised in Survey No.376 1A was owned by Ranganadha Nayakar. He entered into an agreement with one Ramachandra Nadar S/o.Thangapandia Nadar for the sale of 50 cents out of the above said extent. However, while taking sale deed Ranganadha Nayakar chose to take a sale deed in the name of his father (Thangapandia Nadar) in respect of 33 cents out of 50 cents, which was the subject matter of agreement and the remaining 17 cents was purchased in the name of T.R.Sulochana W/o.Ramachandra Nadar, the plaintiff therein. After such sale, the said T.R.Sulochana, the first respondent herein/plaintiff retaining 5 ½ cents out of the 17 cents purchased by her, sold 11 ½ cents to one Manigegam. The said property purchased by Manimegam has been subdivided and

assigned Survey No.376/1A1C. 2.40 acres retained by Ranganadha Nayakar was divided into house sites and plot number 4 measuring an extent of 2400 sq.ft was sold to one Elumalai under a document dated 24.07.1982. The said Elumalai sold the same to one Vimala under a document No.861 of 1990. The said Vimala in turn sold it to Neelamegam under Document No.974 of 1991 dated 28.02.1991. The said property bearing plot no.4 has been assigned Survey No.376/1A 1A2. The said property alone was purchased by the first petitioner in the revision, namely, Saikumaran under document No.1088 of 2002 dated 27.02.2002."

14. By providing the above said particulars, learned counsel for the first respondent / plaintiff wants to contend that the recital found in the sale deed dated 25.01.1991 bearing document No.246 of 1991 (in which the petroleum outlet situates) in favour of Manimegam a mistake crept in and a wrong recital cause to be made as if the remaining 5 ½ cents had already been sold to the above mentioned Elumalai and that in fact no sale was made by the first respondent / plaintiff in respect of 5 ½ cents which is the remainder after deducting the said 11 ½ cents sold to Manimegam. In the schedule of the above said sale deed dated 25.01.1991, the description has been provided as follows:-

SCHEDULE

*All that piece and parcel of land situate in No.173, Selaiyur Village, Saidapet Taluk, Chinglepet District, within the Sub Registration District of Tambaram and registration district of South Madras, comprised in S.No.376/1A1 (Part), of an extent of 11 ½ cents out of 17 cents ( 5 ½ cents was sold to M.N.Elumalai by V.M.S.Ranganatha Naicker) bounded on the North by 20 feet Road, on the South by the land belong to Thangapandia Nadar, on the East by the land to M.N.Elumalai and on the West by the land of V.M.S.Ranganatha Naicker and clearly marked in 'RED' colour in the plan annexed herewith.*

15. It is quite obvious that out of 17 cents purchased by the first respondent / plaintiff (T.R.Sulochana) under the sale deed dated 21.07.1982, the western portion measuring 11 ½ cents alone was purchased by Manimegam. The same has been coloured red in the plan attached to the sale deed. It is quite obvious that 5 ½ cents which lies on the east of the said property was not the subject matter of the sale deed dated 25.01.1991 in favour of Manimegam. The sale deed dated 27.02.2002 bearing document No.1088 of 2002 recites how Saikumaran derived title to plot number 4 having an extent of

2400 sq.ft bearing S.No.376 1A1A2. The said document narrates the derivation of title. It refers to the document No.3839 of 1992 dated 24.07.1982 under which Elumalai purchased it, document No.861 of 1990 under which Vimala purchased it from the said said Elumalai and document No.974 of 1991 under which Vimala sold the same to Neelamegam, the vendor of Saikumaran under document No.1088 of 2002.

16. It is the contention of the learned counsel for the first respondent / plaintiff that what Saikumaran purchased under document No.1088 of 2002 is only an extent of 2400 sq.ft, which has been assigned a sub division No.376/1A1A2, whereas the property namely 5 ½ cents retained by Sulochana, the first respondent herein, is comprised in Survey No.376/1A1B. Patta for the said sub division has also been produced. As there is a dispute and a difficulty regarding where lies the said 5 ½ cents of Sulochana bearing Survey No.376/1A1B and the property of Saikumaran bearing Survey No.376/1A1A2, has arisen, according to the learned counsel for the first respondent / plaintiff, it became absolutely necessary to have the suit property measured with the help of a qualified surveyor to fix its boundaries and to locate the two parties claimed by the properties and that therefore, there is nothing wrong in the order passed by the

learned trial Judge allowing the application for appointment of a Commissioner.

17. Upon considering the rival submissions made on both sides and also the materials produced before this Court, this Court is also of the view that it is not only proper for the trial Court to have appointed the Advocate Commissioner for the above said purpose but also it is absolutely necessary to have the appointment of an Advocate Commissioner to measure the suit property with the assistance of a qualified surveyor to elucidate the points in issue and to enable the Court to find a correct solution to the problem. This Court does not find any defect or infirmity in the order passed by the trial Court warranting interference by this Court in exercise of its power of superintendence under Article 227 of the Constitution of India. There is no merit in the revision and the revision petition deserves to be dismissed.

18. Accordingly, the Civil Revision petition is dismissed. However as requested by the learned counsel for the petitioner, this Court hereby directs that the trial Court while deciding the suit on merit should decide it on its own merits based on evidence to be adduced and uninfluenced by any of the observations made in this

order. No costs. Consequently, the connected miscellaneous petition is closed.

**21.04.2016**

Index: Yes/No  
Internet: yes/No

srn

To

The Subordinate Court,  
Chidambaram

**P.R.SHIVAKUMAR.J**

srn

**C.R.P (PD) No.4833 of 2013**  
**and M.P.No.1 of 2013**

**21.04.2016**