

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.996 of 2012
and
M.P.No.1 of 2012**

1.Arunachalam

2.Ramasamy

.. Petitioners

Vs.

1.Rayadurai

2.Arumugam

3.Manimegalai

4.Thirugnanam

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decreetal order in I.A.No.452 of 2011 in O.S.No.56 of 2007, on the file of the Additional District Munsif Court, Tittagudi, dated 23.09.2011.

For Petitioners : Mr.V.Raghavachari

For Respondents : Mr.K.Sreenivasan

ORDER

The case of the revision petitioners is that they are the defendants in the suit. The respondents herein filed the above suit for Permanent Injunction as against the revision petitioners. The case of the revision petitioners is that the suit scheduled properties situated in S.No.12 Perumunai Village are Government pormboke lands termed as "Kuttai poramboke" land. The revision petitioners are the President and Vice president of Perumunai Grama panchayat respectively and they have been impleaded in their official capacity as elected representatives of their Perumunai village panchayat. They filed written statement and contended that originally a "Kuttai"/ water tank is situated in the suit property and during rainy season the water would get collected in the tank and it will serve as waster source for cultivation and drinking purpose of cattle therein. The suit property is the absolute property of the Government and the respondents herein have no right or interest over the suit property. However with an intention to grab and encroach the suit property vested with the government, the respondents herein has filed the above suit, as if the suit property was under the possession of respondents. In support of their claim, as if the respondents are in possession, they deliberately filed some irrelevant revenue records, despite knowing that the

revenue record is not pertaining to the suit property and the same is relating to some other property. Further the respondents claimed adverse possession over the suit property, claiming the suit property was continuously under their cultivation for several decades.

2.The said claim of possession by the respondents is untrue. To establish the same the revision petitioners filed I.A.No.452 of 2011 under Order 26 Rule 9, praying for appointment of an Advocate Commissioner to inspect, survey and demarcate the suit scheduled of property and note down its physical features, so as for appreciation of facts and ascertain the nature and extent of suit property. However, the learned trial Judge erroneously dismissed the revision petitioners' application for appointment of Advocate Commissioner by holding two reasons viz since the respondent/ plaintiff has mentioned the 4 boundaries of the suit property, it is not required to survey and demarcate the properties and the application for appointment of advocate commissioner was made belatedly by the Revision petitioners. The said order dated 23.09.2011, dismissing the revision petitioners' Interlocutory Application No.452 of 2011 made under Order 26 Rule 9, praying for appointment of an Advocate Commissioner is impugned herein.

3.I heard Mr.V.Raghavachari, learned counsel appearing for the petitioners and Mr.K.Sreenivasan, learned counsel appearing for the respondents.

4.The learned counsel for the Revision petitioner submitted that the suit properties situated in S.No 12 Perumunai Village are Government pormboke lands and termed as "Kuttai poramboke". It is the absolute property of the Government and the respondents herein have no right or interest over the suit property. The description of property stated by the respondents in the plaint does not exist in field. Further the revenue records relied by the respondents do not pertain to the suit properties. Only an appointment of a Advocate Commissioner and a survey with demarcation and noting down of the physical features therein in the suit scheduled property will enable the trial Court for proper appreciation of facts and ascertainment of the nature and the extent therein, so as to arrive at a right decision. Unless an advocate commissioner is appointed and a survey cum demarcation is done, the Trial court will not be able to arrive at a faultless decision.

5.The learned counsel for the respondents submitted that earlier the suit properties stood vested with Government and were

Government poromboke lands, whereas 60 years ago the respondent's predecessors possessed the suit property and till date it is under the possession and cultivation of the respondent's family. The adverse possession of the respondents, remain undisputed by the Government till date and thereby the Government's right over the suit property ceased. Whereupon the revenue records of the suit properties stood mutated in the name of the respondents. Since the boundaries of the suit property are correct and the same is duly mentioned in the plaint, there is no necessity for appointment of Advocate Commissioner in this regard. Further the revision petitioners' application for appointment of an Advocate commissioner is made belatedly and with a motive to prolong the case. Furthermore in a suit for bare injunction an application for Advocate Commissioner is not necessary and if the same is permitted it would result in collection of evidence, which is impermissible. Further the suit property is situated only in a portion of property comprised in S.No.12 and hence the appointment of Advocate Commissioner to survey and demarcate the whole S.No.12 is not required at all.

6.Per contra, the learned counsel for the revision petitioners submitted that the noting of physical features of the suit property is inevitable, when it is specifically contended by this revision petitioner

that there is a "Kuttai"/ water tank in the suit property, whereas the respondents dispute as a cultivating field.

7.In this regard the learned counsel for the revision petitioners relied upon the decision of this Court dated 30.09.2008 in C.R.P.No 3304 of 2008 in the matter of **Periya Kaliyappa Gounder & others -Vs- Karumalaiappa Gounder**, holding that in a suit for bare injunction the appointment of Advocate Commissioner to not note down the physical features would not cause any prejudice to the other side and it would only reduce the burden of the court in arriving at a right conclusion.

8.Further the learned counsel for the revision petitioners relied upon one another decision of this court dated 07.01.2016 in C.R.P.No.2548 of 2015 in the matter of **Vasuki & another -Vs- K.Sarvesawasra Rao**, wherein this court held in a suit for bare injunction, when one of the parties claimed the suit property as a vacant land and the other contends it as a compounded house property, the appointment of advocate commissioner is necessary to note down the physical feature of the suit property as vacant or not.

9.On plain reading of the impugned order, this court finds that

the revision petitioners' application for appointment of Advocate Commissioner is dismissed on two grounds viz the application is made belatedly and since the respondent/plaintiff has mentioned all the 4 boundaries to the suit property, it is not required for appointment of Advocate Commissioner to demarcate and note down the physical features.

10. Further on perusal of the Counter Affidavit of the respondents filed in the said I.A.No.452 of 2011, this Court finds that the respondents claim that they hold an "approximate" extent in S.No.12, whereas its absolute measurement is not mentioned. They further states that the measurement of the suit property is uncertain. Further the revision petitioner contends that there is a Kuttai/ water tank in the suit property, whereas according to the respondent it is cultivating field. Moreover there is a specific claim by the revision petitioners that the land is a Government land. Besides in the interest of justice, this court also taking into account that the respondents herein are added in their Official capacity, finds that a survey by the Advocate Commissioner with the aid of qualified Surveyor will serve the court for proper appreciation of facts. There is also dispute between the parties, over the nature and extent of the suit properties.

11. At this juncture, it is pertinent to note that the importance of appointment of an advocate commissioner has been elaborately discussed by this court in the matter of **S.Palanisamy Gounder Vs N.Palanisamy Gounder & ors**, reported in **2007 (1) CTC 611** whereby this court held even if no application is made by either of parties, in the interest of justice so as to arrive at a correct decision the court on its own can appoint a commissioner for local investigation regarding identification, location, measurement of land. Such report is to be used for appraisal of situation and for better understanding of evidence of parties.

12. In context of suit for bare injunction, it is noteworthy to refer a judgment of Andhra Pradesh High court reported in **2013(1) ALT 548** in the matter of **Donadulu Uma Devi Vs Girika Katamaiah @ Basaiah**, holding that when there is a dispute or issue with regard to identity of property in a litigation, it is necessary to appoint an Advocate Commissioner for localizing the property which may be even taking necessary assistance from a qualified surveyor which will not amount to collecting evidence which is prohibited.

13. Further, the Hon'ble Apex Court vide its decision reported in **2008 AIR SCW 6500, (Haryana Wakh Board Vs Shanti Sarup**

and ors.) held that in a suit for Injunction, the appointment of Advocate Commissioner to note down the physical features of suit property becomes indispensable and the same is permissible, if there exist a quarrel in respect of suit schedule properties.

14. Insofar as the contention that the application is made belatedly, it is noteworthy to refer a reported decision of the Andhra Pradesh High court in 2011(4) ALD 389 in the matter of **Shaik Zareena Kasam Vs Patan Sadab Khan & Ors**, holding that if there is any delay in filing of application to appoint an advocate commissioner and if there are some laches on the part of the party, the court may impose reasonable costs, but it is not desirable to dismiss an application on the ground of mere delay in filing.

15. For the foregoing reasons, this court finds that appointment of advocate commissioner to note down the physical features of the suit property neither cause prejudice to the respondent nor it amount to collection of evidence. When there is a quarrel regarding the nature, extent and features of the suit property, then it is appropriate for the courts to appoint an advocate commissioner in this regard to note down the physical features of the suit property.

16.In the result:

(a) this civil revision petition is allowed by setting aside the order in I.A.No.452 of 2011 in O.S.No.56 of 2007, dated 23.09.2011, on the file of the Additional District Munsif, Tittagudi;

(b) the trial Court is directed to appoint an Advocate Commissioner within a period of 15 days from the date of receipt of a copy of this order and directed the Advocate Commissioner to file report within a period of one month thereafter;

(c) on filing the report, the trial Court is directed to take up the suit, on day to day basis, without giving any adjournment to either parties and to dispose of the same within a period of four months. Both the parties are hereby directed to co-operate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

25.11.2016

Note:Issue order copy on 26.04.2017
Internet:Yes
Index:Yes

vs

To

The Additional District Munsif Court,
Tittagudi.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.996 of 2012**

**and
M.P.No.1 of 2012**

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<http://www.judis.nic.in>