THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

C.R.P.Nos.5000 and 5133 of 2014; 173, 391, 5118 and 5119 of 2015

COMMON ORDER:

C.R.P.Nos.5000 and 5133 of 2014 and 173, 391, 5118 and 5119 of 2015 are filed against the interlocutory applications filed in O.S.No.87 of 2007 by the petitioner-plaintiff seeking permanent injunction restraining the defendants from interfering with the suit schedule property.

CRP No.5000 of 2014 is filed against the order dated 17.11.2014, passed in I.A.No.319 of 2014 to summon the mandal surveyor to produce the sub-divided FMB sketch, and the survey report in proceedings in R.C.No.622 of 2009 dated 11.07.2009 in respect of Survey No.8/3 which was sub-divided into new Survey Nos.8/3C, 8/1B1 and 8/1B3. CRP No.5133 of 2014 is filed against the order dated 17.11.2014 passed in I.A.No.313 of 2014, which was filed to summon the Mandal Surveyor to produce the sub-divided FMB sketch, and the survey report in proceeding Rc.No.622 of 2009 dated 11.07.2009 in respect of Survey No.8/3 which was sub-divided into new Survey Nos.8/3C, 8/1B1 and 8/1B3. CRP No.173 of 2015 is filed against the order dated 17.11.2014, passed in I.A. No.340 of 2014 which was filed to review the order passed in I.A.No.233 of 2014 which was dismissed on 16.06.2014. I.A. No.233 of 2014 was filed to summon the Tahsildar, Gajuwaka to produce the FMB in respect of Survey No.8/3 which was sub-divided into new Survey Nos.8/3C, 8/1B1 and 8/1B3. CRP No.391 of 2015 is filed against the order dated 17.11.2014 passed in I.A. No.339 of 2014 which was filed to review the order passed in I.A.No.232 of 2014 dated 16.06.2014. I.A. No.232 of 2014 was filed to summon the Tahsildar, Gajuwaka to produce the FMB in respect of Survey No.8/3 which was sub-divided into new Sy.Nos.8/3C, 8/1B1 and 8/1B3. CRP No.5118 of 2015 is filed against the order dated 16.06.2014 passed in I.A.No.232 of 2014 to summon the Tahsildar, Gajuwaka to give evidence with regard to the FMB in respect of Survey No.8/3 which was sub-divided into new Sy.Nos.8/3C, 8/1B1 and 8/1B3. CRP No.5119 of 2015 is filed against the order dated 16.06.2014 passed

in I.A.No.233 of 2014 to summon the Tahsildar, Gajuwaka to produce the FMB in respect of Survey No.8/3 which was sub-divided into new Survey No.8/3C, 8/1B1 and 8/1B3.

The petitioner herein is the plaintiff in O.S.No.87 of 2007, and claims to have purchased the suit schedule property from the first defendant by way of a registered sale deed in the year 1989. The petitioner alleges that the first respondent herein had, in collusion with the second respondent, executed a registered power of attorney-cum-agreement of sale in favour of the 2nd respondent in the year 2007; relying on the said power of attorney, the 2nd respondent herein had sought to evict the petitioner from the residential plot which is bounded by a compound wall with a shed therein; the sale deed, executed in favour of the petitioner-plaintiff by the first respondent-defendant, showed the survey number of the suit schedule property as Survey No.8/3; as this survey number was sub-divided thereafter, the petitioner filed an application to the mandal surveyor to cause survey of the suit schedule land, and to demarcate its boundaries; the Tahsildar issued endorsement dated 11.07.2009 to the effect that the land in Survey No.8/3 had been sub-divided; while the report of the Tahsildar dated 11.07.2009 was marked as an exhibit through PW.1, it was necessary to summon the surveyor and cause production of the report dated 11.07.2009; likewise, it was necessary to summon the Tahsildar to cause production of the FMB register; as the two applications were dismissed on 16.06.2014, the petitioner had filed review applications therein; and all the six applications, filed by the petitioner, (four original I.As and two review applications), were dismissed by the Court below.

The Court below rejected the petitioner's applications on the ground that, if the original FMB Registers were in the custody of the Tahsildar, it was not necessary to have the Surveyor examined; as the Suit is for permanent injunction, the petitioner-plaintiff had to prove possession over the suit schedule property as on the date of the Suit; the Surveyor was not competent to produce the FMB register; PW.1 had been examined, documents had been marked, and he was cross-examined; only in one suit, PW.1 was yet to be cross-examined; the plea that the land was sub-

divided was taken in the suit filed in the year 2007 itself; the endorsement of the Tahsildar was shown to have been made thereafter in the year 2009; it was not averred in the petition that an application was filed for obtaining certified copies, and the same was not issued; it was also not shown that the division had been made as per the order of the Tahsildar; instead of summoning the Surveyor and the Tahsildar, and causing production of the FMB Register, they could have filed certified copies of the FMB register; and, under these circumstances, there were no merits to summon the documents or to summon the Tahsildar/Surveyor or to cause production of the Registers.

Smt.N(P) Anjana Devi Satyanarayana, Learned Counsel for the petitioner, would submit that, while the petitioner-plaintiff no doubt had to prove their possession, they were also required to establish their title, at least, prima-facie, as possession follows title; obtaining certified copies may not suffice as certified copies are in the nature of secondary evidence; production of the FMB register, for its verification by the Court, would constitute primary evidence to prove the contents of the said Register; and, even if the petitioner can produce certified copies of the FMB register, the endorsement of the Tahsildar that Survey No.8/3 had been demarcated, and the petitioner's lands fall within one of the Sub-divisions of Survey No.8/3, can only be established if the Tahsildar is summoned and the endorsement dated 11.07.2009 is marked through him.

The petitioner seems to have been issued an endorsement dated 11.07.2009 by the Tahsildar stating that the land in Survey No.8/3 had been sub-divided. This endorsement, according to the petitioner-plaintiff, was required to be corroborated with the contents of the FMB register, in the custody of the Tahsildar, to establish their title over the suit schedule property. Section 61 of the Indian Evidence Act stipulates that the contents of the documents may be proved either by primary or by secondary evidence. Section 62 defines primary evidence to mean the documents themselves produced for the inspection of the Court. Section 63 defines secondary evidence to mean and include certified copies given under the provisions of the Indian Evidence Act. Section 74 defines public documents. Section 76 stipulates that every public officer having custody

of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be; such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to make use of a seal; and such copies to be certified shall be called certified copies. Section 77 provides that such certified copies may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.

The Tahsildar could have issued the endorsement only on the basis of the official records in his custody. The petitioner sought to summon the FMB register to prove the contents of the endorsement dated 11.07.2009 which they claim is based on the contents of the FMB register. The petitioner could have produced certified copies of the relevant extracts of the FMB Register to prove its contents. As has been rightly observed by the Court below, it is not even the petitioner's case that they sought certified copies of the FMB register, and that it was refused.

The jurisdiction, which this Court exercises under Article 227 of the Constitution of India, is supervisory and not appellate. Save patent illegality in the order under revision, no interference is called for. In passing the orders under revision, the Court below cannot be said to have committed any patent illegality necessitating interference in proceedings under Article 227 of the Constitution of India.

All the Civil Revision Petitions fail and are, accordingly, dismissed. Needless to state that this order shall not preclude the petitioners from obtaining certified copies of the relevant extracts of the FMB Register, and to produce them before the Court below. The Miscellaneous Petitions, if any pending, shall also stand dismissed. No costs.

(RAMESH RANGANATHAN, J)

Date: 05.02.2016.
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