

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI

CRP (PD) Nos.1249 & 1250 of 2017
and CMP.No.5883 of 2017 in CRP (PD) No.1249 of 2017

1.Rajendran
2.Manoharan
3.Govindan
4.Kumar

.. Petitioners in both CRPs

Vs

1.Dhanapal

2.The Tahsildar
Harur.

3.The Revenue Divisional Officer,
Harur.

4.The District Revenue Officer,
Dharmapuri.

5.The District Collector,
Dharmapuri

.. Respondents in both CRPs

Prayer in CRP (NPD) No.1249 of 2017:- Civil Revision Petition filed under Section 227 of the Constitution of India, to set aside the memo order dated 09.02.2017 and 22.04.2016 passed in I.A.No.243 of 2016 in O.S.No.43 of 2016 on the file of the District Munsif Court, Harur.

Prayer in CRP (NPD) No.1250 of 2017:- Civil Revision Petition filed under Section 227 of the Constitution of India, against the petition order dated 22.4.2016 passed by the learned District Munsif Court, Harur in I.A.No.243 of 2016 in O.S.No.43 of 2016.

For Petitioner : Mr.L.Mouli

COMMON ORDER

The first respondent, as plaintiff, filed a suit in O.S.No.43 of 2016 on the file of the District Munsif Court, Harur for (i) declaration of title (ii) recovery of possession against defendants 1 to 4 and (iii) mandatory injunction against defendants 5 to 8.

2. According to the plaintiff, the suit property comprising of 6.26 acres in Survey No.15/2 originally belonged to Uthandi Udayar. In the year 1986, Uthandi Udayar, vide registered Will, bequeathed land to an extent of 3.26 acres of suit property to defendants 1 to 4 and an extent of 3 acres to one Sekar and Selvi and from that date they were in peaceful possession of the respective property. Thereafter, the property that belonged to Sekar and Selvi was purchased by the plaintiff. Thereafter, to promote his business, the plaintiff obtained a loan from one Nirmala in the year 2003, and as a security, mortgaged the said property in the name of the lender. On 01.06.2010, the plaintiff repaid the loan amount with interest and got transferred the property in his favour by a registered deed. Thereafter, in the year 2016, the plaintiff raised a contention that the defendants 1 to 4 with the help of defendants 5 to 8 have altered the revenue records and included 0.19 cents of property of the plaintiff into their possession. Hence, the plaintiff filed the suit. Pending suit, he filed an application in I.A.No.243 of 2016 in O.S.No.43 of 2016 for appointment of an Advocate Commissioner to separately measure the suit property that belonged to him and to mark the boundaries, and also to measure the suit

property that was encroached by the defendants 1 to 4 and to submit a report with sketch.

3. By an order of the trial Court dated 22.04.2016, the said application was allowed, and an Advocate Commissioner was appointed to note down the physical features of the suit property and to measure the suit property and to submit a report with a plan on or before 30.06.2016, as per the warrant of commission.

4. Resisting the same, the defendants filed a memo dated 06.09.2016. It is stated therein that the entire extent of the property in Survey No.15/2 was purchased by Uthandi Udayar from one Ibrahim Sahib on 21.07.1949, by a registered sale deed. As per the sale deed the total extent is 6.26 acres. It is stated in the memo that Ibrahim Syab owned a leather shop in the said property and the same was not handed over to Uthandi Udyar and separate patta has been allotted to the vendor's legal heir under UDR survey scheme for the said leather shop. Hence, Uthandi Udyar was not in enjoyment of the property as per the purchase. The plaintiff also claims right only on the property bequeathed to Sekar by Uthandi Udayar, through a registered Will which is said to be in relation to an extent 3 acres. The plaintiff without measuring the property created a sale deed and hence according to the defendants 1 to 4, the entire area in Survey No.15/2 was not in existence. Hence, the

defendants 1 to 4 objected to the order passed in I.A.No. No.243 of 2016 filed by the plaintiff for appointment of advocate commissioner to measure only 3 acres of suit property. According to the defendants if the entire area of 6.26 acres in Survey No.15/2 is measured by appointing an advocate commissioner, it would reveal the truth to the Court.

5. The first respondent/plaintiff filed an objection to the memo filed by the petitioners/defendants 1-4. According to the first respondent/plaintiff, he had purchased the suit property from one Sekar and the petitioners/defendants 1 to 4 have encroached the property and to prove his case, an advocate commissioner may be appointed to measure the suit property. The defendants 1 to 4 have no right to insist the Court to measure the properties other than the suit property.

6. The learned Judge upon considering the memo filed by the defendants and objection filed by the plaintiff and the relief sought for in the suit, rejected the memo filed by the defendants 1 to 4/petitioners. Challenging the same, the revision petitioners/defendants 1 to 4 filed two Revision Petitions, one in CRP(NPD) No.1249 of 2017, to set aside the memo order dated 09.2.2017 passed in I.A.No.243 of 2016 in O.S.No.43 of 2016 on the file of the learned District Munsif Court, Harur and other revision petition in CRP(NPD) No.1250 of 2017, against the petition order dated 22.04.2016 passed in I.A.No.243 of 2016 in O.S.No.43 of 2016 on the file of the learned District Munsif Court, Harur, appointing Advocate Commissioner to measure the suit property.

7. The learned counsel for the revision petitioners contended that only if the entire extent of 6.26 acres in Survey No.15/2 is measured, it can be brought to light the dispute raised by the first respondent/plaintiff. It is also submitted that patta has been issued to the legal heirs of Ibrahim Sayub with regard to the leather factory run by them in the suit property. Further, it is contended that the learned Judge has appointed the Advocate Commissioner without giving any reason and hence the order is an non-speaking order.

8. Heard the learned counsel for petitioner and perused the materials placed before this Court.

9. According to the first respondent/plaintiff, he had purchased an extent of 3 acres of suit property from one Sekar for valuable consideration and he is in possession and enjoyment of the suit property and that the petitioners/defendants have encroached a portion of the suit property, and it was known to him only in the year 2016, and thereafter he had immediately filed a suit for declaration. Pending disposal of the suit, the plaintiff filed an application in I.A.No.243 of 2016 for appointment of advocate commissioner to measure the suit schedule property on the premise that the defendants 1 to 4 have encroached a portion of suit property that was purchased by him.

10. In view of the specific averments and relief sought for by

the plaintiff in the suit, this Court is of the view that the learned Judge has rightly rejected the memo dated 06.09.2016 filed by the petitioners herein/defendants 1 to 4. The order dated 22.04.2016 passed by the learned Judge in appointing the Advocate Commissioner to measure the suit property of the plaintiff and order rejecting memo do not suffer from any infirmity or illegality.

11. Accordingly, both the civil revision petitions are dismissed.

No costs.

05.04.2017

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To:
The District Munsif Court,
Harur.

V.M.VELUMANI,J

ds

CRP (PD) No.1249 & 1250 of 2017

05.04.2017

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