

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.463 of 2015
and M.P.No.1 of 2015

1.Natarajan
2.Mahalakshmi

.. Petitioners

Vs.

1.The State of Tamil Nadu
Represented by its District Collector
Thiruvarur District.

2.The Revenue Divisional Officer
Needamangalam
Thiruvarur District.

3.The Block Development Officer
Panchayat Union
Needamangalam
Thiruvarur District.

4.Rajasekaran

.. Respondents

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Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.08.2014 made in I.A.No.113 of 2013 in O.S.No.62 of 2011 on the file of the Subordinate Court, Mannargudi.

For Petitioners	: Mr.A.Sundaravadhanan
For R1 to R3	: Mr.T.Jayaramaraj Govt. Adv. (CS)
For R4	: Mr.S.Dhanasekar

ORDER

This Civil Revision Petition is filed against the fair and decretal order dated 18.08.2014 made in I.A.No.113 of 2013 in O.S.No.62 of 2011 on the file of the Subordinate Court, Mannargudi.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.62 of 2011 on the file of the Subordinate Court, Mannargudi. The petitioners filed said suit for permanent injunction with regard to A schedule property restraining the respondents from interfering with their peaceful possession and enjoyment of the suit property and declaration with regard to B schedule property on the ground of long possession and usage. The respondents 1 to 3 filed written statement on 29.02.2012 and are contesting the suit. The petitioners filed I.A.No.113 of 2013 under Order XXVI Rule 9 and Section 151 C.P.C., for appointment of an Advocate Commissioner to inspect the B schedule property and to file a report along with plan.

3. According to the petitioners, B schedule property is in the middle of A schedule property. A schedule property is patta land. Their vendor was in possession of A and B schedule properties for a long time and after purchase, the petitioners are in possession of A and B schedule properties. The petitioners deepened and desilted B schedule property in the year 2007 by spending Rs.80,000/-. At the time of extending water body in B schedule property, a portion of patta land in A schedule property was included by the petitioners. To prove the same, appointment of Advocate Commissioner is necessary.

4. The respondents 1 to 3 filed counter affidavit and submitted that B schedule property is a Government water body poramboke land, which is used by general public for their benefits. B schedule property was handed over to Panchayat and it is maintained by the Panchayat. Every year, Panchayat auctioned fishing right and whenever it is necessary, it auctioned the cutting and selling of the trees in the water body in B schedule property.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application.

6. Against the said order of dismissal dated 18.08.2014 made in I.A.No.113 of 2013, the present Civil Revision Petition is filed by the petitioners.

7. Heard the learned counsel for the petitioners, learned Government Advocate (CS) appearing for the respondents 1 to 3, learned counsel for the fourth respondent and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioners are seeking appointment of Advocate Commissioner to inspect the suit property and file his report with regard to B schedule property. The petitioners filed suit for permanent injunction with regard to A schedule property and for declaration of title to B schedule property. According to the respondents 1 to 3, B schedule property is a Government water body poramboke land and the water body is being used by the general public. The petitioners cannot claim any declaration of title to the Government water body poramboke land. The petitioners are claiming declaration of title in respect of B schedule property on the ground of long possession and usage.

9. From the averments made by the petitioners and respondents 1 to 3, it is seen that the petitioners are claiming exclusive possession of B schedule property by long possession and usage, while the respondents are claiming B schedule property is a Government poramboke water body being used by the general public and it is maintained by Panchayat. It is well settled that the parties must prove their case by letting in evidence and the Advocate Commissioner cannot be appointed to collect evidence. In view of the relief sought for in the suit, appointment of Advocate Commissioner is not necessary. The petitioners are seeking to collect evidence to substantiate their case.

10. For the above reason, the Civil Revision Petition is dismissed. As the suit is of the year 2011, the learned Judge is directed to dispose the suit in O.S.No.62 of 2011 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

19.12.2017

Index:Yes/No

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V.M.VELUMANI,J.

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To

The Subordinate Judge, Mannargudi.



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