

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.4749 of 2015
& M.P.No.1 of 2015

1. Rajendran
2. Mottaiyan
3. Chindraj
4. Lakshmanan
5. Ramasamy
6. Subramani
7. Ganesan

.. Petitioners

Vs.

1. Dr. Elangovan Vadehiri
2. Amutha
3. The District Collector
Salem.
4. The Tahsildar
Attur.
5. The Revenue Inspector
Karumandurai Village & Post
Kallakurichi Taluk
Villupuram District.
6. The Village Administrative Officer
Vadakku Nadu
Chinnakalrayan Hills
Attur Taluk

Salem District.
Respondents

..

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif Court at Attur, dated 07.07.2015 in I.A.No.351 of 2015 in I.A.No.223 of 2013 in O.S.No.78 of 2013.

For Petitioner : Mr.P.Valliappan

For RR1 and 2 : Mr.P.J.Rishikesh,

For RR3 to 6 : Mr.M.Venugopal,
Special Government Pleader

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 07.07.2015 made in I.A.No.351 of 2015 in I.A.No.223 of 2013 in O.S.No.78 of 2013 on the file of the District Munsif Court at Attur.

2. The petitioners are the defendants 1 to 7, respondents 1 and 2 are the plaintiffs and the respondents 3 to 6 are the defendants 8 to 11 in O.S.No.78 of 2013. The respondents 1 and 2 filed suit for declaration that they have exclusive and absolute right over the suit property and consequently, for a direction to the first

petitioner and his men to hand over the obliterated portion of 0.70 cents land on the southern side of S.No.376/1B, after leaving 2.20 cents of the first petitioner and for permanent injunction. The seventh petitioner filed written statement and is contesting the suit.

3. The respondents 1 and 2 filed I.A.No.223 of 2013 for appointment of an Advocate Commissioner to measure the suit property in Survey No.376/1B. The Advocate Commissioner was appointed and he inspected the property and filed his report. Again, respondents 1 and 2 filed I.A.No.351 of 2015 for appointment of Advocate Commissioner to re-visit the suit property, to measure the petition mentioned property, to fix the boundaries between the petition mentioned property and the first petitioner's land situated on Northern side with an extent of 2.20 cents in S.No.376/1B and to note down the physical features.

4. According to the respondents 1 and 2, when the Advocate Commissioner was appointed earlier in I.A.No.223 of 2013, he measured the property in S.No.376/1B. The extent of the land in S.No.376/1B is 3.25 cents. The first petitioner purchased only 2.20

cents and the original S.No.376/1 was wrongly sub-divided as S.No.376/1B in the name of the first petitioner. The respondents 8 to 11 filed their objection to the memo. The learned Judge rejected the memo stating that the respondents 1 and 2 have to file another petition to re-visit the property and to fix the encroached portion. In view of the same, respondents 1 and 2 filed the present application in I.A.No.351 of 2015.

5. The petitioners filed counter affidavit opposing the present application and submitted that already an Advocate Commissioner was appointed and he filed his report after measuring the suit property. The respondents 1 and 2 filed a memo for a direction to the Advocate Commissioner to fix the encroached portion in S.No.376/1B, since the first petitioner has purchased only 2.20 cents, to fix the boundaries between the lands of the petitioners and respondents 1 & 2, the said memo was rejected and the present application is not maintainable.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed

the application holding that the petitioners have not filed written statement and there is difficulty in identifying the property of the respondents 1 and 2 and only by measuring the property in S.No.376/1B and fixing the boundaries as per the sale deeds of the petitioners, then only, the claim of the respondents 1 and 2 can be decided.

7. Against the order dated 07.07.2015 made in I.A.No.351 of 2015, the present civil revision petition is filed by the petitioners.

8. The learned counsel appearing for the petitioners reiterated the averments in the grounds of revision and submitted that the Advocate Commissioner cannot be appointed to collect evidence. When there is no necessity for re-visit and re-issue of warrant of commission to the same Commissioner, allowing application will create further complications in the matter and it will not help the Court to decide the issue in the suit. In support of his contention, he relied on the following judgments:

(i) *2016 (3) MWN (Civil) 737 (A.Elumalai v. G.Vijayalakshmi and others)*;

(ii) *2006 (4) CTC 25 (Rajeswari v. Nagarajan and others)*;

(iii) AIR 2006 SC 2113 (*Nagar Mahapalika (now Municipal Corpn.) v. State of U.P. and others*);

(iv) 2015 (2) CTC 108 (*R.Vasanthi v. M.Soundararajan*);

(v) AIR 2009 SC 520 (*Union of India and others v. Ram Kumar Thakur*);

(vi) 2005 (1) CTC 356 (*Kitnammal v. Nallaselvan and others*);

9. Heard the learned counsel for the petitioners and respondents and perused the materials available on record.

10. The grievance of the petitioners is that already memo filed by the respondents 1 and 2 for re-issue of warrant of commission to the Advocate Commissioner was rejected. Hence, the respondents 1 and 2 are not entitled to file another application for the very same relief. The said contention has no merits.

11. From the typed set of papers filed by the respondents 1 and 2, it is seen that the memo filed by the respondents 1 and 2 was rejected by the order dated 14.10.2014. In the said order, the learned Judge has held that proper remedy to the respondents 1 and 2 for re-issue of warrant of commission is by way of another

petition. Therefore, the present application is maintainable.

12. From the materials on record, it is seen that there is a dispute with regard to the properties in question. In such a situation, an Advocate Commissioner can be appointed to measure the property to identify the properties of the petitioners as well as respondents 1 and 2, so as to assist the Court to decide the issue. No prejudice will be caused to the petitioners and it will not amount to collect evidence. The judgments relied on by the learned counsel for the petitioners do not apply to the facts of present case.

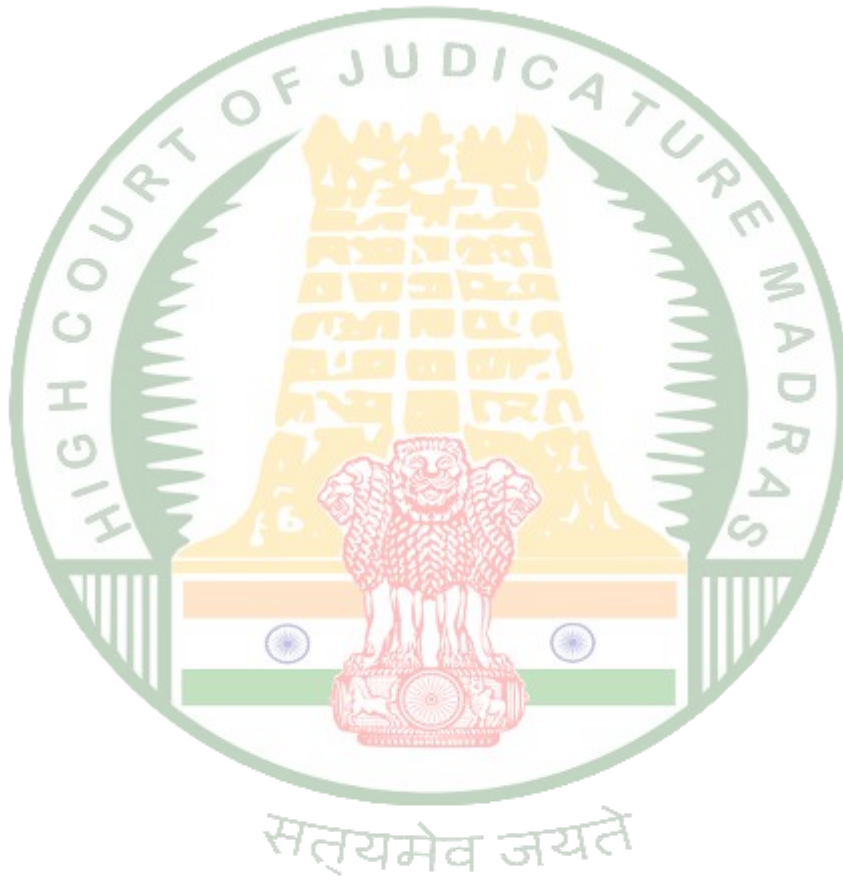
13. The learned Judge considering all the materials available on record allowed the application. In these circumstances, there is no illegality or irregularity warranting interference by this Court with the order of the learned trial Judge, dated 07.07.2015.

14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

28.06.2017

Index : Yes/No

gsa/kj



WEB COPY

V.M.VELUMANI, J.

gsa/kj

To

1. The District Collector,
Salem.
2. The Tahsildar,
Attur.
3. The Revenue Inspector,
Karumandurai Village & Post,
Kallakurichi Taluk,
Villupuram District.
4. The Village Administrative Officer,
Vadakku Nadu,
Chinnakalrayan Hills,
Attur Taluk,
Salem District.

C.R.P.(PD)No.4749 of 2015
& M.P.No.1 of 2015

The seal of the Department of Judicature Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital of Ashoka in front of it. The lion capital is set against a background of the Indian national flag's saffron, white, and green horizontal stripes. The words 'DEPARTMENT OF JUDICATURE MADRAS' are inscribed in a green circle around the central image. Below the seal, the Sanskrit motto 'सत्यमेव जयते' (Satyameva Jayate) is written in Devanagari script.

WEB COPY

28.06.2017