

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM

THE HONOURABLE Dr. JUSTICE P.DEVADASS

C.R.P. PD No.3091 of 2013

and

M.P.No.1 of 2013

Natarajan

.... Petitioner

Vs.

1. Kaipillai @S. Kumar

2. The President,
Kathiruppu Panchayat
Sirkazhi Taluk,
Nagapattinam District.

... Respondents

Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and final order of the District Munsif Court, Sirkazhi dated 07.08.2012 made in I.A.No.149 of 2012 in O.S.No.202 of 2010.

For petitioner : Mr.S.Sounthar

For respondents : No appearance

ORDER

Aggrieved by the dismissal of his petition in I.A.No.149 of 2012, which has been filed to appoint a Surveyor to measure the suit properties with the help of Surveyor the plaintiff in O.S No. 202 of 2010 on the file of District Munsif, Sirkazhi directed this revision.

2. The plaintiff filed the said suit seeking a direction to issue mandatory injunction / direction to remove the fence put up by the first defendant in the suit property situate in North Anjan village, Manai Kathrippu Block, Sirkazhi Taluk, Nagapattinam District. The first defendant filed written statement resisting the suit.

3. On the application filed by the plaintiff, an Advocate/ Commissioner was appointed and he has also filed a report, Subsequently the plaintiff filed I.A. No.149 of 2012 to appoint, Surveyor to measure the property.

4. The trial Court dismissed the said I.A on the ground that it is attempt by the plaintiff to collect evidence.

5. The learned counsel for the revision petitioner contended that the petition is not intended for collection of evidence. There is dispute as to physical features, in the suit property it includes lie of this land on a particular direction and measurement also. This cannot be established or understood by oral evidence. It would be easily understood by measuring the properties by both sides by a Surveyor with reference to the title deeds

and also the location of the Panchayat Road.

6. I have anxiously considered the submissions of the learned counsel for the petitioner, perused the impugned order and the materials placed.

7. Contraverted aspects relating to Physical features may be with regard to location lie of the land, measurements to identify, boundaries as mentioned in the plaint and as mentioned in the title deeds. In such circumstances, the Court cannot be made to understand a situation by oral evidence, depending on oral evidence for such physical features will be confusing. It may leads to some wrong conclusions. In such circumstances in order to obviate this type of difficulty and to render a correct finding in the suit. It would be better to have the assistance from technical personnel like Surveyor. It would not be prejudicial to the interest of the defendant. In such an event, the off quoted phraseology that no Advocate Commissioner shall be appointed to collect the evidence becomes irrelevant. In this case, took a doctrinaire, pedantic approach. In this matter, pragmatic approach is very much needed. The trial Court failed to view the matter in proper perspective.

8. In view of the foregoing, it is ordered as under:-

- (i) This revision succeeds.
- (ii) The impugned order passed by the learned District Munsif, Sirkazhi in I.A. No.149 of 2012 in O.S NO.202 of 2010 is set aside.
- (iii) The trial Court will direct the concerned Surveyor to measure the property with reference to the title deeds of both sides and the connected property documents and file his report with a sketch map.
- (iv) The remuneration to the Surveyor shall be fixed, as per rules.
- (v) No order as to costs.

9. The Miscellaneous petitions are closed.

11.04.2017

Index : Yes
Internet : Yes
Speaking / Non speaking

vsi2/bsm

To

1. The Principal District Judge,
Nagapattinam.
2. The District Munsif Court,
Sirkazhi.

Dr.P.DEVADASS, J.

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