

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(PD) No.4673 of 2013 and
M.P.No.1 of 2013

1.M.Thangavel
2.V.Marimuthu
3.T.Karuppannan .. Petitioners
(for themselves and on behalf of the
residents of S.No.203-4-1A3, Varagurampatti village)

vs

1.Chinnavadan
2.Chinnan
Ramasamy (died)
3.Selvaraj .. Respondents

Revision under Article 227 of the Constitution of India against the
order dated 12.9.2013 made in I.A.No.1060 of 2012 in O.S.No.492 of
2008 on the file of the Additional District Munsif Court, Namakkal.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.T.Dhanyakumar (for R1)

No Appearance (for R2 & R3)

ORDER

This Civil Revision Petition has been filed by the petitioners
against the order dated 12.9.2013 made in I.A.No.1060 of 2012 in

O.S.No.492 of 2008 on the file of the Additional District Munsif Court, Namakkal.

2. The petitioners are plaintiffs and the respondents are defendants 1, 2 and 4 in the suit. The plaintiffs have filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs and for costs.

3. Pending suit, the plaintiffs have filed I.A.No.1060 of 2012 seeking to appoint an advocate commissioner to identify and note down the physical features of the suit properties and its boundaries with the help of the surveyor.

4. According to the plaintiffs, the first defendant purchased the property in S.No.200/6 and 210/4 situated at Vagurampatti village with specific boundaries. But in the sale deed of the first defendant, the survey numbers have been wrongly stated as S.No.203/1, 203/3 and taking advantage of the wrong mentioning of the survey numbers in the sale deeds, the defendants were trying to disturb the possession and enjoyment of the plaintiffs in the suit properties. Hence, it is

necessary to appoint an advocate commissioner to identify the suit properties and note down its physical features and file a report.

5. Resisting the petition, the defendants have filed counter stating that plaintiffs were not in possession of the suit properties. The plaintiffs cannot seek appointment of advocate commissioner to collect evidence as to who was in possession of the suit properties. Since the earlier suit filed by the predecessor of the plaintiffs was dismissed and thereafter, by falsely creating sale deeds, the plaintiffs have filed the present suit. Further, when the suit was listed for trial, in order to drag on the trial proceedings, the plaintiffs have filed the petition seeking to appoint an advocate commissioner.

6. Upon consideration of the rival submissions, the trial Court dismissed the petition. Aggrieved by the same, the plaintiffs have filed the present Civil Revision Petition.

7. Challenging the order of the trial Court, the learned counsel for the plaintiffs submitted that the merits and demerits of the suit need not be gone into at the stage of deciding the petition seeking appointment of a commissioner because such findings would affect the

merits of the suit and would cause prejudice to the parties. He would submit that crux of the dispute involved in the suit can be resolved only by physical verification after measuring the properties with the help of surveyor and no amount of oral evidence would meet the purpose sought to be achieved. The learned counsel further submitted that the appointment of advocate commissioner is very much necessary to elucidate the matter in dispute and no prejudice would be caused to the defendants, if advocate commissioner is appointed. Hence, the learned counsel prayed for setting aside the order of the trial Court.

8. Per contra, the learned counsel for the respondents contended that in order to identify the suit properties, advocate commissioner cannot be appointed. He would submit that only to drag on the trial proceedings, the plaintiffs have filed the petition and therefore, the trial Court was right in dismissing the petition.

9. I have considered the rival submissions made by the learned counsel appearing on either side and also perused the materials available on record.

10. It appears that the plaintiffs have filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit properties by the plaintiffs. The plaintiffs seeking appointment of advocate commissioner on the ground that properties shown in the sale deeds of the first defendant are situated in Survey Nos.2006/6 and 210/4 of Vagurampatti village with specific boundaries. But the same has been wrongly mentioned in the sale deeds as Survey No.203/1 and 203/3. Taking advantage of the wrong mentioning of the survey numbers in their sale deeds, the defendants are giving trouble to the plaintiffs from enjoying the suit properties. Therefore, in order to find out the identity of the suit properties and its boundaries, it is necessary to appoint an advocate commissioner with the help of surveyor. Whether the survey numbers mentioned in the sale deeds of the first defendant are correct or not cannot be decided in this appeal.

11. It is settled that advocate commissioner cannot be appointed to collect evidence and also to note who is in possession of the suit properties. Since the present suit is for permanent injunction, it is the bounden duty of the plaintiffs to establish that they are the owners of the suit properties and on the date of filing of the

suit they are in possession of the same.

12. The specific averment of the plaintiffs is that the properties shown in the sale deeds of the first defendant dated 27.5.1985 and 15.2.1967 are situated in S.Nos.200/6 and 210/4 of Vagurampatti village. On the other hand, it is the say of the defendants that the first defendant purchased 1.17 acres in S.No.203/3 through a registered sale deed dated 15.2.1967 from Kali Gounder and was in possession of the same. Like wise, the first defendant, his brother Chinnan, Ramasamy and Selvaraj have jointly purchased 69 cents in S.No.203/1 through a registered sale deed dated 27.5.1985 from Periyasamy and Pushpanathan @ Mahalingam and were in joint possession of the same and after purchase, subdivision has also been effected as S.No.203/1A.

13. Since the present suit is for permanent injunction, the prayer of the plaintiffs to appoint an advocate commissioner to identify the suit properties with the assistance of surveyor cannot ordered. However, the Court can appoint an advocate commissioner to note down the physical features of the suit properties. Noting down the physical features of the suit properties would not amount to culling out

evidence. It is seen that in the present suit, the trial has not begun.

14. In view of the above, the Civil Revision Petition is allowed and the impugned order of the trial Court is set aside. The Additional District Munsif, Namakkal is directed to appoint an advocate commissioner within a period of 15 days from the date of receipt of a copy of this order by directing the advocate commission to inspect and note down the physical features of the suit properties and file a detail report with plan. Upon filing of the report and plan, the trial Court is directed to dispose of the suit on merits and in accordance with law within a period of two months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

14.02.2017

VS

Note: Issue order copy on 08.01.2019

Index : Yes/No

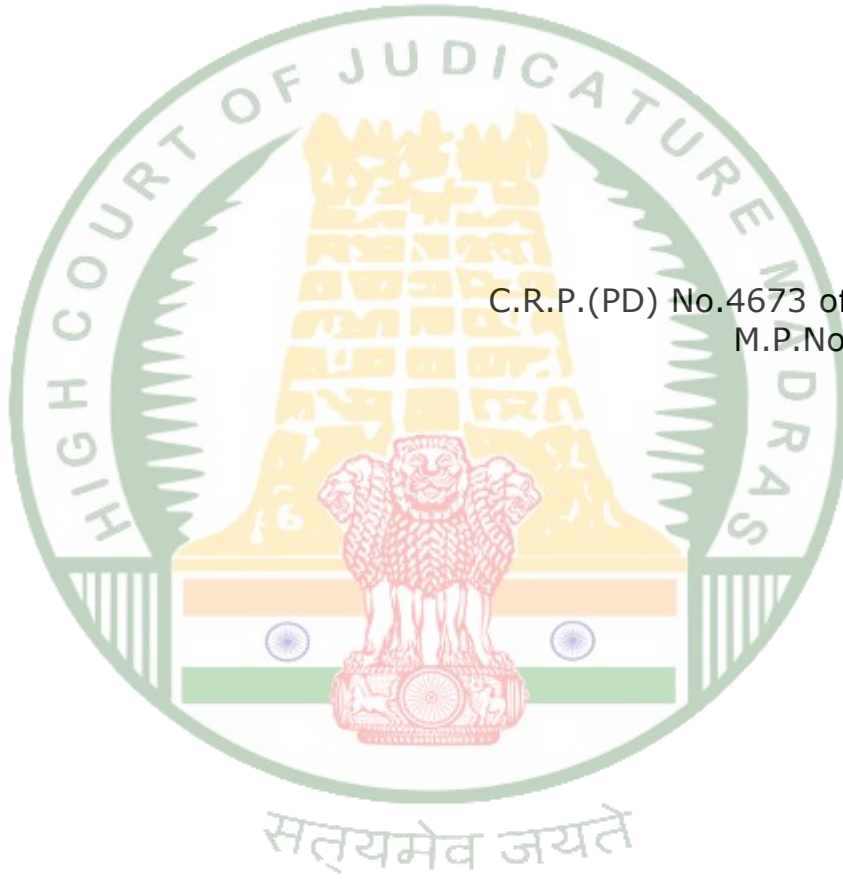
To

The Additional District Munsif,
Namakkal.

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M.V.MURALIDARAN, J.

VS



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