



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2017
(Reserved on 08.06.2017)

WEB COPY

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 1380 of 2014

and

M.P (MD) No. 1 of 2014 and CMP (MD) No. 4738 of 2017

- 1) Sellamuthu
- 2) Aruputhanani
- 3) Devanbu
- 4) Silambarasi
- 5) Steephan
- 6) Pushpalatha
- 7) Jeyamani
- 8) Karunanithi
- 9) Pappathi
- 10) Thirumoorthi

... Petitioners

vs.

D. Duraisamy

... Respondent

Petition filed under Article 227 of the Constitution of India, against the Order and decreetal order dated 28.02.2014 passed in I.A.No.1294 of 2013 in O.S.No.74 of 2011 by the Additional District Munsif Court, Karur.

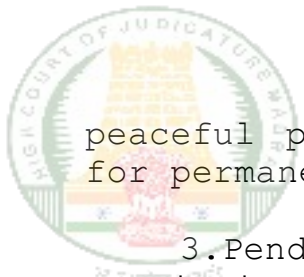
For Petitioners : Mr.M.Karthikeya Venkitachalapathy

For Respondent : Mr.V.Sitharanjandas

ORDER

This revision petition is filed by the defendants aggrieved by the order allowing the application filed by the plaintiff to appoint Advocate Commissioner to measure the suit property and note down its physical features and count the number of trees found in the suit land.

2.The case of the plaintiff is that the suit properties were purchased by him under 3 sale deeds and he is in possession and enjoyment of it. The mutation of revenue record has already been effected. While so, the defendants along with their henchman have removed the boundary stones and prevented him from fencing his property. Therefore, to restrain them from interfering his



peaceful possession and enjoyment, the plaintiff has filed suit for permanent injunction.

3. Pending suit, he filed an application to appoint Advocate Commissioner to note down the physical feature, but could not pursue it due to ill-health hence, it was dismissed. He revived the prayer by filing fresh application for appointment of Advocate Commissioner to note down the physical feature, measure the property with the help of surveyor and count the number of trees standing in the suit property. Some of the defendants have instituted a representative suit in O.S.No.214/2009 for declaration of title in respect of larger extent of land inclusive of the suit property without any basic document.

4. While the Trial Court has thought fit necessary to appoint an Advocate Commissioner to note down the physical feature as prayed, the revision petitioners who are aggrieved by the said order have filed this revision.

5. According to the revision petitioners, the earlier application for appointment of Advocate Commissioner was dismissed. So, the second application for the same relief is not maintainable. Further, in a suit for permanent injunction, to find out who is in possession, it has to be proved through witnesses and document. Evidence cannot be collected through the Advocate Commissioner.

6. Per contra, learned counsel for the respondent herein submits the necessity to file the application to appoint an Advocate Commissioner arose due to the suit filed by the revision petitioners claiming title in respect of vast area of land in the village including his patta land which is subject matter of his suit. Therefore, it is just and necessary to inspect the suit property and measure the same through a surveyor.

7. Heard both sides.

8. It is an admitted fact that a suit in O.S.No.214/2009 has been filed for vast area of land for declaring title in favour of a particular community and the same is pending. The property in the present suit O.S.No.74/11 is included in the previous suit. The respondent in this revision petition is arrayed as 118th defendant in the previous suit O.S.No.214/2009.

9. The prayer in the application is to appoint Advocate Commissioner to note down the physical feature, measure the suit property with the help of Surveyor and to count trees found in the suit property. Such an endeavour is necessary when there is allegation of forcible trespass and encroachment and a counter claim in a parallel suit claiming title over the suit property. This is not an attempt to collect evidence but to place evidence



before the Court already existing on the filed.

10. The specific case of the respondent herein is that he had purchased the suit property through 3 sale deeds and patta stands in his name. He is in possession and enjoyment of the same. While the respondent contends that the revision petitioners are aggressors trying to encroach upon his patta land, the contrary claim of the revision petitioners is that a large extent of land including the suit property belongs to their community. In such circumstances, it is appropriate to identify the land of the respondent/plaintiff as per the document by measuring it with the help of surveyor. Therefore, the order appointing an Advocate Commissioner for the said purpose is upheld. The plea of the revision petitioners that the second petition for same relief is not maintainable, is factually and legally not sustainable since earlier application was not dismissed on merits but for non prosecution.

11. Therefore, this Court finds no merit in this revision petition. Hence, this Civil Revision Petition is dismissed. No costs. The interim order already granted is vacated. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Karur.

+1 cc to Mr.V.Sitharanjandas , Advocate in SR.No. 59638

+1 cc to Mr.K.Bala subramani , Advocate in SR.No. 59809

nbi

AE/MR/SAR3/22.06.2017/3P/4C

order made in
CRP (PD) (MD) No.1380 of 2014
12.06.2017