



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2017

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP (NPD) (MD) No.1415 of 2015
and M.P. (MD) No.1 of 2015

Arumugam ... Petitioner/Petitioner/Appellant

Vs.

1.Chellappan
2.Rajakumaran
3.Padmanaban

... Respondents/Respondents/Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India, to call for the records in I.A.No.170 of 2014 in A.S.No.39 of 2014 on the file of the Principal Sub-Court, Nagercoil and set aside the order dated 27.02.2015.

For Petitioner : Mr.K.Neelamegam
For Respondents : Mr.PT.Ramesh Raja

O R D E R

This Civil Revision Petition has been filed to set aside the order dated 27.02.2015 passed in I.A.No.170 of 2014 in A.S.No.39 of 2014 on the file of the Principal Sub-Court, Nagercoil.

2. The petitioner would aver among other things that the suit is filed for permanent injunction restraining the defendants to put any construction and directing the defendants not to restrain the peaceful possession and enjoyment of the plaintiff. The trial court has dismissed the suit by stating that though the plaintiff is entitled to only 1.25 cents he claims title to 1.50 cents and the plaintiff has not sought for declaration of $\frac{1}{4}$ cents and he has not proved his possession in $\frac{1}{4}$ cents of land. Against which, the plaintiff has filed an appeal in A.S.No.39 of 2014. During pendency of appeal, the plaintiff has filed an Interlocutory Application in I.A.No.170 of 2014 seeking appointment of Advocate Commissioner. The said application was dismissed stating that the application is filed to ascertain the enjoyment of the petitioner over the suit property and the Advocate Commissioner could not be appointed only to prove the enjoyment.



3. According to the petitioner, the petitioner is in possession and enjoyment of 1.50 cents of land including $\frac{1}{4}$ cent, which was purchased from the legal heirs of one Thangamai Nadachi and therefore, the Appellate Court ought to have appointed Commissioner to survey the suit property to find out whether the petitioner is claiming possession over Panchayat land is right.

4. The petitioner would claim that he was in possession and enjoyment of 1.50 cents of land including $\frac{1}{4}$ cent, which was purchased from the legal heirs of one Thangamainadachi.

5. It is stated that he is possession of 1.50 cents of land including $\frac{1}{4}$, which was purchased from one Thangamainadachi. Even as per the petition it has been specifically stated that as per documents he is entitled to 1.25 cents. He sought for an appointment of Advocate Commissioner for the following prayer:

1. To prepare a detailed plan and measure area the physical features of plaint scheduled in Re-survey No.149/23 of Theoor Village.
- 2.To measure the area of 1.25 cents in the plaint schedule property on Re-survey No.143/23.
- 3.To note down the point whether the adjacent northern side vacant area of plaintiff/Appellant house in consist 1.25 cents.
- 4.Any other points which will be requested by the Plaintiff/Appellant at the time of visit of the commissioner to the suit property.

6. The learned Judge has stated that the petitioner has filed the above application only to prolong the proceedings and dismissed the said Interlocutory Application.

7. The learned counsel for the respondent would submit that he does not have any dispute as to 1.25 cents, which the petitioner claims title through the documents. As far as $\frac{1}{4}$ cent is concerned, it is an exclusive property of the Panchayat, where a well existed.

8. The petitioner would submit today across the bar that he is entitled to 1.25 cents as per documents and he wanted Advocate Commissioner to verify the physical features.

9. On going through the records, it is seen that there is no dispute with regard to 1.25 cents which the petitioner has got through the valid sale deed.

10. The learned counsel for the respondent also submits that there is no dispute about it.



11. When that is so, there is no necessity for the appointment of Advocate Commissioner and has rightly held by the learned Judge the petition seeking appointment of Advocate Commissioner has been filed to prolong the proceedings.

12. The learned counsel for the petitioner would rely on the judgment reported in 2003(2) MLJ 399(In PR.Chockalingam Vs.M.Pichai and another) stating that when there was a serious dispute with regard to the area and boundaries of the land in question, the Court should have got the identity of the property established by issuing survey commission before the case is disposed of.

13. Here in the present case, as far as the boundary is concerned, there is no dispute. Even in the averment made by the learned counsel for the petitioner that he wanted appointment of Advocate Commissioner for 1.50 cents to verify 0.25 cents, the respondent submits that he has no dispute with regard to 1.25 cents and there is dispute only 0.25 which belongs to Panchayat. Therefore the application would only go to show that the same was filed to prolong the proceedings. The learned Judge has rightly dismissed the said petition. The judgment relied on by the petitioner is not applicable to the present case.

14. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected M.P.(MD) No. 1 of 2015 is also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To,

The Principal Judge,
Nagercoil.

+1cc to M/S.PT.Ramesh Raja, Advocate SR.No. 88296

CRP(NPD) (MD)No.1415 of 2015
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