



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.06.2017
CORAM :
THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

CRP (PD) (MD) No.127 of 2017
and
CMP (MD) No.405 of 2017

1) Kaleeswari
2) Muthulakshmi ... Petitioners

vs.

1) Venugopal
2) Vasudevan
3) Kannan
4) The Tahsildar,
Taluk Office,
Weekly Market Road,
Sivagangai Town,
Sivagangai District. ... Respondents

Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 06.10.2016 in I.A.No.79 of 2016 in A.S.No.109 of 2013 on the file of the Sub Court, Sivagangai, dismissing the petition filed under Order 26 Rule 9 and Section 151 CPC.

For Petitioners : Mr.K.Sekar
For R1 to R3 : Mr.C.Godwin
For R4 : Mr.M.Murugan, Government Advocate

ORDER

The revision petitioners who are plaintiffs in the suit having lost the suit for declaration in respect of the suit property have preferred first appeal.

2.Pending appeal, they have taken out an application for appointing Advocate Commissioner to inspect the suit property and to measure the property based on the revenue documents and Exhibits A2 to A6 which according to the plaintiffs are their title deeds and other related documents.

3.The said application has been dismissed by the appellate Court on the ground that to collect evidence, Commissioner cannot be appointed. The object of the local investigation under Order 26 Rule 9 is not to collect evidence and therefore, the revision petitioners are not entitled for the relief of appointing Advocate Commissioner at the appellate stage. Aggrieved by the said order, the appellants have come forward with this revision.



4.The learned counsel for the revision petitioners submitted that the suit property forms part of Jamin Pimash Nos.539 to 545 wherein, after re-survey, a single Survey No.261 was assigned and later sub-divided into various sub divisions. The plaintiffs who own 2 acres and 98 cents in Survey No.261/3B1A sold away 2.15 acres and 18 cents of land was acquired for formation of road and balance 62 cents are with them. But due to their failure to correlate the sketch and the description of the property, the Trial Court rejected their claim. Hence, it is necessary to appoint an Advocate Commissioner to measure the property and place before the Court correlating the survey number, sketch and the description of the suit property.

5.The learned counsel appearing for the respondents submitted that apart from alienation of 2 acres and 15 cents of the plaintiffs' lands to third parties, 18 cents of their land were acquired for road formation and another 25 cents was acquired for Adi-draavidar Welfare Department. The revision petitioners have also received compensation given by the department for the said acquisition which has been recorded by the Trial Court.

6.The counsel for the respondents further submitted that the Trial Court has disbelieved the case of the plaintiffs that 25 cents of land acquired for Adi-draavidar Welfare Department was not from out of 2 acres and 98 cents which was originally held by the plaintiffs and their father in Survey No.261/3B1A. Therefore, nothing remains for the plaintiffs to stake claim and they filed the suit for declaration for an extent of 62 cents without even disclosing the lands acquired for road formation and for Adi-draavidar Welfare Department. Therefore, the suit as laid was found to be false and rightly been dismissed. Therefore, the plaintiffs cannot collect evidence or improve their case by filling up the lacuna by taking out an application for appointing Advocate Commissioner to measure the land at the appellate stage.

7.To buttress his contention, the counsel for the respondents also pointed out that under Exhibit A8, patta has been given jointly in the names of the plaintiffs as well as defendants in respect of Survey No.261/3B1A and therefore, the plaintiffs cannot have exclusive title over the suit property as claimed.

8.The application filed under Order 26 Rule 9 for appointment of Advocate Commissioner at the appellate stage has been dismissed by the appellate Court on the ground that the correctness of the measurements given in the adjacent land is not known to the Court and measuring third parties' property will not help to decide the merits of the case. The documents relied by the revision petitioners out of Exhibits A2 to A6, only Exhibit A2 relates to the property of the petitioners and other exhibits relate to



properties of third parties. Therefore, to measure the land based on the documents of third parties may not be of much help. No warrant can be issued to the Commissioner to measure the schedule mentioned property as requested by the petitioner.

9. The core contention and dispute between the rival parties is that whether the 25 cents of land acquired for Ad-dravidar Welfare Department falls within Survey No.261/3B1A and whether the property of the revision petitioners is excluded from the larger extent of 2 acres 98 cents in Pimash No.540 corresponding Survey No.261/3B1A. If the land acquired for Adi-dravidar Welfare Department falls within survey No.261/3B1A, then 25 cents acquired by the department and compensation paid to the revision petitioner is appropriate and nothing will remain in Survey No.261/3B1A for the plaintiffs to claim. Whereas, the property acquired by Adi-dravidar Welfare Department does not fall within Survey No.261/3B1A, then there is something for the revision petitioners to claim. Even then, Exhibit A8 which is a joint patta pertaining to Survey No.261/3B1A disproves the case of the revision petitioners that the land falling in Survey No.261/3B1A is the exclusive land of the revision petitioners.

10. Therefore, unless the revision petitioners succeed that Survey No.261/3B1A is their exclusive land and not jointly owned by them and the defendants, mere measuring the suit property is not going to help or enhance the case of the revision petitioners leave alone filling up the lacuna. Hence, this Court finds that nothing survives in the revision petition to entertain and appoint the Advocate Commissioner at the appellate stage to find out the physical features or measure the property as sought for by the revision petitioners.

Accordingly, this Civil Revision Petition is dismissed. No costs.

Sd/-

Assistant Registrar (Writs)

/True copy/

Sub Assistant Registrar

To:

The Sub Court, Sivagangai.

+1 CC to Mr.K.Sekar, Advocate, SR No. 59631.

+1 CC to Mr.C.Godwin, Advocate, SR No. 59567.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 59871

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PSM/GT/SAR2/21.06.2017/3P/5C