



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2017  
(Reserved on 13.03.2017)

WEB COPY

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CRP (NPD) (MD) No.466 of 2017  
and  
CMP (MD) No.2265 of 2017

P.Philip ... Petitioner/Respondent

vs.

1)Anthony Viyagappan  
2)Loordhu Paul  
3)Arul Panithurai ... Respondents /Appellants

Prayer:- Civil Revision Petition filed the under Article 227 of Constitution of India, against the fair and decreetal order passed in I.A.No.118/16 in A.S.No.41/2015 dated 04/01/2017 on the file of the Principal District Judge, Tirunelveli.

For Petitioner :Mr.T.Selvan

For Respondents :Mr.G.Prabhu Rajadurai

#### ORDER

This Civil Revision Petition is directed against the order passed by the lower appellate Court pending appeal, to appoint a Surveyor to measure the property mentioned in Exs.A1 & A2 and Ex.B4 and to note down the physical features of the said property.

2.The learned counsel for the petitioner submitted that since the dispute between the parties is to the title over the suit property and the parties have already produced their respective title deeds and relevant documents to substantiate their case, the appointment of Commissioner by the appellate Court to note down the physical features of the property is not necessary.

3.Having lost the case in the Trial Court, to fill up the lacuna belatedly, the present application is filed by the defendants and the lower appellate Court, without considering the objection made by the revision petitioner/plaintiff, has allowed the application, thereby causing undue prejudice to the revision petitioner, enabling the respondents/appellants to make a roving enquiry.

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4.It is also submitted by the counsel for the revision petitioner that the appellants in the first appeal have also taken



out an application under Order 41 Rule 27, to produce additional 31 documents at the stage when the first appeal was posted for arguments. This clearly shows the *mala fide* intention of the respondents/appellants to protract the appeal proceedings and to deprive the revision petitioner/plaintiff from enjoying the fruits of the decree.

5.The counsel for the respondents denied the allegation made by the petitioner's counsel and submitted that there was an error in the respective title deeds, regarding survey number. Whereas, four boundaries of the respective title deeds of the parties are one and the same. To establish this fact, inspection of the suit property by a qualified Surveyor is necessary to meet the ends of justice. Therefore, the respondents took out the application to establish their claim over the suit property and the appellate Court has rightly allowed that application. Inspection of the disputed property based on Exs.A1 & A2 and B4, is in no way going to prejudice the revision petitioner. Therefore, there is no merit in the claim of the revision petitioner, hence this revision petition is liable to be dismissed.

6.Perusal of the records indicates that the suit for declaration of title and injunction was filed by the revision petitioner against the respondents herein. The said suit was decreed. Aggrieved by that, first appeal has been preferred by the defendants and pending appeal, interlocutory application under Order 26 Rule 9 was filed to appoint an Advocate Commissioner to note down the physical features of the property as found in Exs.A1, A2 and B4. Being the title deeds of the respective parties, the claim of the plaintiff in this case is that he purchased 35 cents of land on 14.09.2011 bearing Survey No.136/4B, in Mukkoodal Village, Ambasamudram Taluk. Whereas, the case of the defendants is that they purchased 37 cents of land bearing Survey No.134/7. But, in fact, it is only 136/4B, but the boundaries of both the sale transactions are one and the same and the defendants being the first purchasers of the property, the subsequent purchase by the plaintiff is illegal and improper.

7.The Trial Court, after considering the plea of the plaintiff, has held against the defendants. It has categorically held that the boundaries described in the title deeds of the plaintiff and the defendants are not one and the same. The defendants have not proved that the survey number of their title deeds has been wrongly given as 134/7 instead of 136/4B. When there is a categorical finding by the Trial Court, the present attempt has been made by the defendants in the first appeal stage, which has been preferred on 06.07.2015, by taking out an application for appointment of Advocate Commissioner on 06.06.2016, nearly one year after the filing of the first appeal. On the face of the documents, not only the survey number, also the extent and the four boundaries are not identical. Therefore, as pointed out by the revision petitioner, the present attempt by the unsuccessful defendants is only to protract the proceedings and to make a roving enquiry to fill up the *lacuna* in this case.



8. Therefore, this Court finds that the order of the Trial Court in allowing the Commissioner Appointment application is erroneous and liable to be set aside accordingly this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

/True Copy/

Sd/-

Assistant Registrar (P&A)

Sub-Assistant Registrar

To

The Principal District Judge,  
Tirunelveli.

+1 CC TO MR.G.PRABHU RAJADURAI, ADVOCATE, SR NO.15700

+1 CC TO MR.T.SELVAN, ADVOCATES, SR NO.15672

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MAS/SKN-RSK:24.03.2017:3P-4C

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