



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.06.2017

CORAM :

WEB COPY

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P. (PD) (MD) No. 965 of 2017

and

C.M.P. (MD) .No. 4254 of 2017

Shiam Francis

... Petitioner/Plaintiff

Vs.

1. The District Collector,
Kanyakumari District,
Nagarcoil,
represented the State of TamilNadu.
2. The Assistant Engineer,
WRO/PWD, Irrigation Section,
Eraneil, Eraniel Village,
Kalukulam Taluk, Kanyakumari District.
3. The Executive Engineer,
WRO/PWD, Irrigation Section,
Nagercoil, Nagarcoil Post,
Agasteeswaram Taluk,
Kanyakumari District.

... Respondents/Defendants

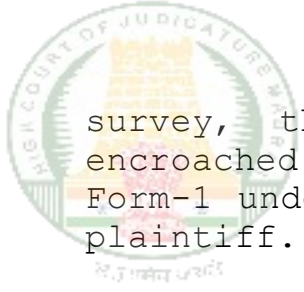
Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order passed in I.A.No.402 of 2016 in O.S.No.145 of 2016, dated 03.08.2016 on the file of the Subordinate Judge, Padbanabapuram.

For Petitioner : Mr.G.Cenil

O R D E R

The Civil Revision Petition has been filed against the fair and decretal order passed in I.A.No.402 of 2016 in O.S.No.145 of 2016, dated 03.08.2016 on the file of the Subordinate Judge, Padbanabapuram.

2. The suit in O.S.No.145 of 2016 was filed for permanent injunction against the defendants, who are the District Collector, the Assistant Engineer, WRO/PWD, Irrigation Section and Executive Engineer, WRO/PWD, Irrigation Section, Nagercoil. During the re-



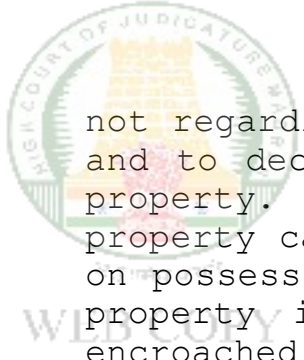
survey, the defendants found that the plaintiff herein has encroached upon the Poromboke land and therefore, notice under Form-1 under Eviction of Encroachment Act, 2007 was served on the plaintiff.

3. Aggrieved by that, the plaintiff has filed a suit and in the said suit, an application to appoint an Advocate Commissioner under Order 26, Rule 9 of C.P.C., has been preferred by the plaintiff. After hearing both sides, the trial Court has dismissed the application, on the ground that the entire facts connected with the schedule property is based on record and on re-survey, it is found that in Re-survey Nos.569/12 and 569/13 have been encroached upon by the plaintiff and eviction proceedings have been initiated. Inspection by an Advocate Commissioner to note down the physical features is therefore no way going to enhance the case of plaintiff.

4. Aggrieved by the dismissal of the Commissioner application, the plaintiff has preferred the Revision Petition under Article 227 of the Constitution of India, on the ground that the plaintiff is the title holder of 33 cents which he has inherited through his ancestors. While so, the trial Court just referring the Survey No.569/12 and has erroneously held that the age of the tree and age of the compound wall is immaterial to decide the facts regarding title and possession.

5. It is the case of the revision petitioner that the Commissioner Report is necessary to arrive at a right conclusion whether the compound wall was constructed after re-survey or being before re-survey measurement. While the compound wall was in existence for more than 47 years, the allegation of encroachment by the plaintiff is unsustainable and to establish the same, inspection by the Advocate Commissioner is essential.

6. This Court, after going through the plaint, written statement and the affidavit filed along with the I.A.No.402 of 2016, finds that this is a suit for injunction based on the title alleging that the 33 cents of Old Survey No.2618, Eraniel Village is owned by the plaintiff and whereas, the portion of the land which is more fully described in the Schedule about 3 cents is under dispute, wherein the Revenue Officials along with Public Works Department Officials have measured and earmarked that portion as Poromboke land and encroached by the plaintiff. Whether there is any encroachment on the Poromboke land or not per-se cannot be found out through appointment of Advocate Commissioner. It is found that already the Revenue Taluk Surveyor has measured the land and has found that there is some encroachment. Even if compound wall was put up by the plaintiff 47 years ago, that is not going to indicate the title over the piece of land unless he can establish that the compound wall falls within 33 cents of land for which he claims title. The prayer as sought in the suit is



not regarding title, but only for permanent injunction, possession and to declare the possession of the plaintiff over 'B' schedule property. Whether the plaintiff have title over the 'B' schedule property cannot be ascertained through Advocate Commissioner based on possession. Admittedly the claim of the defendants is that the property is a Poromboke property owned by the Government and encroached by the plaintiff. The plaintiff cannot have a right of adverse possession against state as claimed by the counsel for the plaintiff. Therefore, I find no error in the order of the trial Court in dismissing the application filed under Order 26 Rule 9. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (C.O)

/True Copy/

Sub-Assistant Registrar

To

1. The Subordinate Judge, Padmanabhapuram
2. The District Collector,
Kanyakumari District,
Nagarcoil,
3. The Assistant Engineer,
WRO/PWD, Irrigation Section,
Eraneil, Eraniel Village,
Kalukulam Taluk, Kanyakumari District.
4. The Executive Engineer,
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Nagercoil, Nagarcoil Post,
Agasteeswaram Taluk,
Kanyakumari District.

Vsa/akv

RL/5C/3P/SV/MMS/SAR3/16/6/2017

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