



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) Nos. 2568 & 2569 of 2016 (PD)

&

C.M.P. (MD) No. 12094 of 2016

Bhoothanatha Pillai

.. Petitioner/Petitioner/Plaintiff
in both the C.R.Ps.

Vs.

1. Manickavasagam Pillai, S/o. Nagar Pillai

2. C.T. Raji

.. Respondents/Respondents/Defendants
in both the C.R.Ps.

Prayer in both the C.R.Ps.:- Civil Revision Petitions filed under Article 227 of the Constitution of India, to set aside the order dated 29.11.2016, passed in I.A.Nos. 410 and 411 of 2016 in O.S.No. 209 of 2012 on the file of the Principal Subordinate Court, Nagercoil.

For Petitioner : Mr. D. Saravanan

For Respondents : Mr. M. P. Senthil

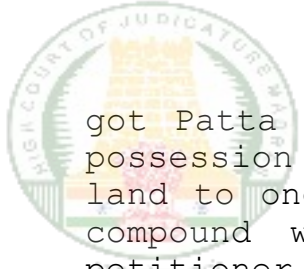
COMMON ORDER

These Civil Revision Petitions have been filed to set aside the order dated 29.11.2016, passed in I.A.Nos. 410 and 411 of 2016 in O.S.No. 209 of 2012 on the file of the Principal Subordinate Court, Nagercoil.

2. Since the issues involved in both the Civil Revision Petitions are one and the same, they are heard together and disposed of by this common order.

3. Facts of the case:-

(i) The petitioner is the plaintiff and the respondents are the defendants in O.S.No. 209 of 2012 on the file of the Principal Subordinate Court, Nagercoil. The petitioner filed the suit for declaration of title and possession of the plaint schedule property and for permanent injunction. According to the petitioner, the suit schedule properties are ancestral properties and no title deeds are available individually in the petitioner's mother's name. The petitioner is the only son of his mother. After the death of his mother, the petitioner inherited the plaint schedule property and



got Patta No.1026 for the suit property. Based on the title, the possession and enjoyment of the property, he sold 14.070 cents of land to one Mahadevan. The plaint schedule property is bounded by compound walls on all sides and lying as a single plot. The petitioner is in enjoyment of the property for years together. The respondents taking advantage of the petitioner's absence in the suit property, trespassed into the suit property and damaged the cattle shed and tried to alter the physical features.

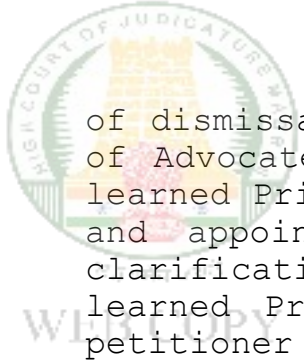
(ii) The petitioner after filing written statement, the trial has commenced and evidence was recorded and written arguments were submitted by both the petitioner and the respondents. At that stage, the petitioner filed I.A.Nos.410 and 411 of 2016 to re-open and to appoint an Advocate Commissioner to identify the suit property and the property mentioned in Exs.B.1, B.2 and B.6. According to the petitioner, originally, 23 cents belonged to one Manickavasagam Pillai, as per partition and settlement. By Will Ex.B.6, dated 04.06.1993, he bequeathed 11 cents on the southern side of the property to the first defendant - Pootha Pandi, who is his son-in-law. The western side boundary mentioned as 'Poominatha Pillai Kalam'. The first defendant settled the suit property in favour of his wife by Ex.B.12. He wrongly mentioned the boundaries and claiming right over the suit property. Therefore, the petitioner has filed the present Interlocutory Applications to re-open and to appoint an Advocate Commissioner.

(iii) The respondents filed counter affidavit and opposed the said applications and submitted that earlier, the petitioner filed an application in I.A.No.238 of 2012 for appointment of Advocate Commissioner and the same was dismissed, vide order dated 07.04.2014. Against the said order of dismissal, the petitioner has filed C.R.P.(MD)No.1372 of 2014 before this Court. Therefore, the present application filed for the very same relief is not maintainable and it is barred by *res judicata*. Further, in the suit, arguments were heard and the suit is posted for judgment. Only to drag on the proceedings, the present petitions are filed and therefore, he prayed for dismissal of both the applications.

(iv) The learned Principal Subordinate Judge, Nagercoil, considering the averments mentioned in the affidavit and the counter affidavit and considering the materials available on record, dismissed the applications holding that the petitioner has already filed I.A.No.238 of 2012 for the very same relief and the same was dismissed on merits by the Court and the petitioner has claimed declaration of title with regard to suit property and he has to prove his title and possession by documents and when the suit is posted for further arguments, only to drag on the proceedings, the petitioner has filed the present petitions.

4. Against the said order of dismissal dated 29.11.2016, the present Civil Revision Petitions are filed.

5. The learned counsel for the petitioner submitted that the learned Principal Subordinate Judge, Nagercoil, failed to see that C.R.P.(MD)No.1372 of 2014 filed by the petitioner against the order



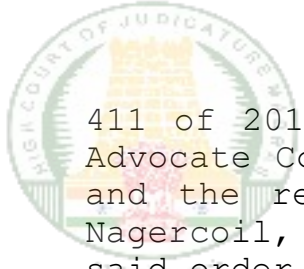
of dismissal, passed in earlier I.A.No.238 of 2012, for appointment of Advocate Commissioner is pending and it is not dismissed. The learned Principal Subordinate Judge ought to have re-opened the case and appointed an Advocate Commissioner, as the Court required clarification with regard to measurement of the property. The learned Principal Subordinate Judge ought to have seen that the petitioner based on the title, possession and enjoyment, sold 14.070 cents to one Mahadevan and there is a compound wall around the suit property and identity of the property is not in dispute. The petitioner sought for an appointment of Advocate Commissioner to find out the correct boundaries, as the respondents have created documents showing wrong boundaries claiming the suit property.

6. Per contra, the learned counsel for the respondents submitted that earlier, the petitioner filed an application in I.A.No.238 of 2012 for appointment of Advocate Commissioner and the same was dismissed, vide order dated 07.04.2014. Against the said order of dismissal, the petitioner has filed C.R.P.(MD)No.1372 of 2014 before this Court. Therefore, the present application filed for the very same relief is not maintainable and it is barred by *res judicata*. He further submitted that there is no dispute with regard to identity or extent of the suit property. The petitioner has no title or interest over the property in S.No.372/23 and the petitioner is not in possession and enjoyment of the same. He has no title to S.No.372/23 and has no right to sell the same. It absolutely belongs to the respondents and the respondents are in possession and enjoyment of the same. The petitioner is trying to collect evidence to prove his case through the Advocate Commissioner. He also submitted that in the suit, arguments were heard and the suit is posted for judgment. Only to drag on the proceedings, the present petitions are filed and therefore, he prayed for dismissal of both the Civil Revision Petitions.

7. I have heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8. From the materials on record, it is seen that the evidence on behalf of the petitioner and the respondents were completed and written arguments were filed and the suit is posted for further arguments, at that stage, the petitioner filed the present applications to re-open and to appoint an Advocate Commissioner. The learned Principal Subordinate Judge considering the fact that already the petitioner filed I.A.No.238 of 2012 for appointment of Advocate Commissioner and the same was dismissed on merits on 07.04.2014 and the petitioner filed the above applications at the stage of further arguments only to drag on the proceedings. It is not disputed that earlier I.A.No.238 of 2012 filed for appointment of Advocate Commissioner, was dismissed on merits. Against the said order of dismissal, the petitioner has filed C.R.P.(MD)No.1372 of 2014 before this Court. The said Civil Revision Petition was also dismissed by this Court, vide order dated 18.01.2017 [today].

9. In view of these facts, the applications in I.A.No.410 and



411 of 2016 filed by the petitioner, to re-open and to appoint an Advocate Commissioner are not maintainable and are devoid of merits and the reason given by the learned Principal Subordinate Judge, Nagercoil, is valid. There is no irregularity or illegality in the said order warranting interference by this Court.

10. In the result, both the Civil Revision Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

The Principal Subordinate Judge,
Nagercoil.

+2 cc to M/s. D.SARAVANAN, ADVOCATE, SR NO.3191,3192

smn2

MAS/SV-MMS:02.02.2017:4P/4C

Common order in
C.R.P. (MD) Nos.2568 & 2569 of 2016 (PD)
&
C.M.P. (MD) No.12094 of 2016
18.01.2017