

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 25.10.2018

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(NPD)No.84 of 2011

and

M.P.No.1 of 2011

Periyasamy

...Petitioner

Vs

1. Thangavel (deceased)

2. Ambayiram (deceased)

3. Valliammal

4. Karuppian

5. Chandrahasan

6. Ramu @ Ramachandran

7. Arivazhagan

8. Ravi

...Respondents

(Respondents 3 to 6 were brought on record as LR's of the deceased 1st respondent and Respondents 7 & 8 were brought on record as LR's of the deceased 2nd respondent, vide order of Court dated 21.06.2017, by KKSJ, made in CMP Nos.9979 of 2016 to 9983 of 2016 in CRP No.84 of 2011.)

For Petitioner : Mr.R.Balasubramanian
For Respondents : R1 & R2 died,
R3 & R4 died vide memo
dated 10.08.2017,
R5 to R8 No appearance.

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to set-aside the order dated 4.12.2009 made in I.A.No.131 of 2008 in A.S.No.38 of 2006 on the file of the Subordinate Judge, Ariyalur and order for the reissue of the warrant of Advocate Commissioner to revisit and to note down the CD fence and the trees situate thereon.

ORDER

The above Civil Revision Petition has been filed challenging the order of dismissal of the application filed by the revision petitioner herein for re-issuing the warrant to the Advocate Commissioner to revisit and note down the CD fence situated in the suit property.

2 . The brief facts of the case are as follows:-

(a) The revision petitioner had filed the suit O.S.No. 8 of 1997, on the file of the District Munsif of Ariyalur, for declaration of his right and title to the suit property and for a permanent injunction restraining

the defendants who are the respondents herein from cutting the standing trees on southern side of the suit property and interfering with the peaceful possession and enjoyment of the suit property by the revision petitioner. The suit schedule property is an extent of 25 cents in survey No.201/4A, of Kadukoor Village, Ariyalur Taluk, Thiruvalluvar District, within specified boundaries and the dispute in particular is with regard to the Southern portion which is the fenced portion marked CD along with the trees and shown in the rough plan attached to the plaint.

(b) It is seen that the Advocate Commissioner who had inspected the property pending the suit had submitted a report. The suit O.S.No.8 of 1997 was decreed by the judgment and decree dated 29.01.1999 by the Additional District Munsif, Ariyalur. The said judgment and decree was taken up on appeal by the 1st defendant in A.S.No.16 of 1999, by the judgment and decree dated 07.07.2004. The learned Subordinate Judge, Ariyalur, remitted the matter back to the Trial Court for the limited purpose of having the suit property measured with the help of a Surveyor and after permitting either party to let in oral and documentary evidence. The learned District Munsif was directed to complete the entire exercise within a period of six months and pronounce the judgment.

(c) After the remand, an Advocate Commissioner has visited the property and submitted a report dated 20.7.2005 along with the sketch. The plaintiff has given objections to the said application and the learned Additional District Munsif, Ariyalur without adverting to the objections and on the basis of this Commissioner's report marked as Exhibits C3 and C4 opined that the plaintiff had failed to prove his right to the suit property and consequently the learned Judge dismissed the suit. Aggrieved by the said judgment and decree the revision petitioner filed A.S.No.38 of 2006. In the said appeal, the revision petitioner had filed I.A.No.131 of 2008 for re-issuing the warrant as specified in the orders passed in A.S.No.16 of 1999.

(d) The first respondent herein opposed the said application by stating that the property had been twice inspected by the Advocate Commissioner. The counter did not deal with the averments in the affidavit filed in support of the petitioner that the Advocate Commissioner had not complied with the instructions in the earlier remand order. The learned Subordinate Judge, Ariyalur by his order dated 04.12.2009, dismissed the said application accepting the contentions of the respondents herein. It is aggrieved by this order the revision petitioner is before this Court.

3. Heard, Mr.R.Balasubramanian, learned counsel appearing for the petitioner. The respondents side had not entered appearance.

4. On a perusal of the records it is seen that the dispute is with reference to the Southern portion of the suit property. The suit property totally measures 25 Cents and is situated in Survey Field No.201/4A. It is further seen that the learned Subordinate Judge, Ariyalur, in the earlier appeal A.S.No.16 of 1999 had remanded the suit only for the purpose of measuring the suit property with the help of a Surveyor and with particular reference to the measurements of the plaintiffs property both on site and as per the documents produced by either parties.

5. On a perusal of exhibit C3 report and the C4 plan it is seen that the Advocate Commissioner has only measured the points C2, C1 and D1, C1 without measuring the entire suit property. In fact in the report, the Advocate Commissioner would state that he had already measured the suit property and submitted his report on 19.09.1997. The Advocate Commissioner has totally failed to appreciate that the remand itself was to measure the suit property with the help of the land surveyor and also by comparing it with the documents that was to be submitted on either side.

6. The report exhibit C3, does not give any indication as to whether the documents of the parties had been taken note of and it also does not show the measurements of the entire suit property. Therefore, there is an omission on the side of the Advocate Commissioner to execute the warrant in lines of the judgment in A.S.No.16 of 1999. It is also seen that the revision petitioner has submitted an objection to the said report, which from a reading of the judgment dated 20.3.2006 in O.S.No.8 of 1997 has not been considered. Without considering the objections and appreciating the judgment in A.S.No.16 of 1999 the learned Additional District Munsif, Arilayur has proceeded to dismiss the suit filed by the revision petitioner. The learned Subordinate Judge, Ariyalur, while considering I.A.No.131 of 2008 has not taken into account all these factors and as a result he has dismissed the said application. The order of the learned Subordinate Judge, Ariyalur, requires to be set-aside as it is not taken into consideration the directions issued in the judgement in A.S.No.16 of 1999.

7. The learned Subordinate Judge, Ariyalur, is therefore directed to re-issue the warrant to the Advocate Commissioner to note down the measurements of the suit property which includes the Southern disputed portion and to take the assistance of the Taluk Surveyor while

executing the said warrant in keeping with the judgment of the learned Subordinate Judge, Ariyalur in A.S.no.16 of 1999.

8. It is also seen that the inspection had been done in the absence of the revision petitioner, though the judgment in A.S.No.16 of 1999, had directed that inspection should be done in the presence of the parties. The Advocate Commissioner to whom the warrant is to be re-issued should be instructed to issue notice to both the parties and to measure the suit property with the help of a Taluk Surveyor, in the presence of both the revision petitioner as well as the respondents and submit his report within a period of two weeks from the date of receipt of the warrant.

9. The Civil Revision Petition is allowed with the above directions. Consequently, the connected Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

25.10.2018

Index :Yes/No
Internet :Yes/No
Speaking order / Non-speaking order
msvm/rst

To

The Subordinate Judge,
Ariyalur.

P.T. ASHA.J
msvm



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