

IN THE HIGH COURT OF JUDICATURE AT MADRAS**Reserved on : 29.10.2018****Delivered on : 13.12.2018****Coram****THE HONOURABLE MS. JUSTICE P.T. ASHA****C.R.P.(PD).No.2019 of 2012**

1. Smt. Sivakami

2. Sri. A.R. Palaniappan

...Petitioners/Petitioners
/ Defendants

Versus

Smt. Sujatha

...Respondent/
Respondent/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 19.03.2012 passed by the learned District Munsif, Palladam in I.A.No.109 of 2011 in O.S.No.315 of 2006.

For Petitioners : Mr. R. Sankarappan

For Respondent : Mr. S. Arjun

ORDER

The above Civil Revision Petition arises against the order passed by the Learned District Munsif, Palladam in I.A.No.109 of 2011 in O.S.No.315 of 2006.

2. The said petition has been filed under the provisions of Order 26 Rule 9 and Section 151 of Civil Procedure Code to appoint an Advocate Commissioner to revisit and to note down the physical features in and around the suit property, to measure the entire survey field No.294 of Panikkampatty village, Palladam Taluk and fix correct boundary stones for both the petitioners' and the respondent's properties with the Assistance of the District Surveyor and to file a detailed report.

2. The facts in brief for disposing of the above Civil Revision Petition are as follows:

(i) The respondent who is the plaintiff had filed a suit for a declaration that he is the absolute owner of the suit property and for a consequential injunction restraining the petitioner /defendants from interfering with her peaceful possession and enjoyment of the suit property.

(ii) It is the case of the respondent is that she had purchased the suit property under a Sale Deed dated 16.09.2005 from one Padmanabhan through his Power Agent.

(iii) It is her case that her vendor derived right to the said property under a Partition Deed dated 20.01.1944. Under the Partition

Deed the said Padmanabhan had been allotted an extent of 2.38 ¹/₂ acres in S.F.No.294 of Panikkampatty Village, Palladam Taluk. Out of the said extent of 2.38 ¹/₂ acres, the respondent had purchased only an extent of 1.15 acres on the Southern side.

(iv) It is her further case that the 1st petitioner herein is wife of the 2nd petitioner who owns lands west of the suit property. Taking advantage of the fact that the lands had not been subdivided in the Revenue Records and on account of the joint Patta, the petitioners had tried to encroach into the respondent's lands. Therefore the respondent was constrained to issue a legal notice on 29.04.2006, to which a reply dated 05.05.2006 was received containing totally false statements.

(v) Thereafter on 24.09.2006 the revision petitioners attempted to trespass into the suit property and erected a stone fence. This prompted the respondent to file the suit in O.S.No.315 of 2006 on the file of the Learned District Munsif Palladam.

(vi) The revision petitioners herein had filed a detailed written statement inter-alia rebutting the claim of the respondent.

(vii) It was the case of the revision petitioners that the 1st petitioner had purchased an extent of 2.38 $\frac{1}{2}$ acres in S.F.No.294 of Panikkampatty Village, Palladam Taluk, from one Muthusamy Counder, S/o Selva Ganapathy.

(viii) from the date of purchase, the revision petitioners have been an exclusive possession and enjoyment of the lands. Thereafter, the revision petitioner had converted an extent of 1.92 $\frac{1}{2}$ acres on the Western end into house-sites and sold the same.

(ix) The defendant had retained an extent of 46 cents as a vacant land on the Eastern end. The house sites and vacant site put together were comprised in S.F.No. 294/2. The respondent /plaintiff has no right, title or interest in these lands and the two properties are clearly demarcated by a ridge. The revision petitioners denied the respondents plea that they had encroached into the suit property on the contrary, it was the respondent had encroached into the lands.

3. Pending the suit, the respondent had moved an application in I.A.No.109/2011 for appointing a Advocate Commissioner to inspect the suit properties with the help of a surveyor and submit a report after noting down to the physical features. The Commissioner had

submitted a report and plan dated 12.08.2010 to which the revision petitioners had submitted a detailed objection.

4. Thereafter the revision petitioners had filed the petition in I.A.No.109 of 2011, which is the subject matter of the present revision, seeking to appoint the Advocate Commissioner to revisit the entire extent in S.F.No.294 of Panikkampatty Village, Palladam Taluk, note down the physical features and fix correct boundaries for both the petitioners' and respondent's properties with the help and assistance of the District Surveyor.

5. In the affidavit filed in support of the said petition the revision petitioner had given the following reasons for seeking the revisit:-

- Taluk surveyor who accompanied the Advocate Commissioner earlier had not measured the entire S.F.No.294
- the plans therefore produced by the Taluk surveyor and measurement were totally wrong and the measurement given therein are also wrong.
- The Taluk Survey Field No.294 had also been sub-divided into S.F.Nos.294/1 and 2.
- The Taluk surveyor has not measured the East and South side of

the suit property and without a proper measurement has wrongly observed that the revision petitioners have encroached into an extent measurement of 10 metres in width and 99.2 meters in length.

- The earlier report does not mention the boundaries and the physical features around the suit property and consequently, third party properties have not also been reflected in the report.

6. Considering the fact that the Taluk surveyor have totally overlooked these basic details, the revision petitioners had contended that they had lost faith in the capability of the Taluk surveyor to give a correct picture and therefore they had sought for the appointment of the District Surveyor to accompany the Advocate Commissioner.

7. This petition was vehemently opposed by the respondent who contended that the allegations against the Taluk surveyor who had discharged his duties diligently was totally wrong and improper and misleading and that there was no necessity to direct a fresh visit.

8. The respondent would further contend that during the earlier inspection, the Taluk surveyor, at the request of the learned Advocate Commissioner had measured both the petitioners and respondents

properties in the manner contemplated under the Surveyors and Boundaries Act and measurement was done in the presence of the Advocate for the revision petitioner as well as the revision petitioners. The present petition was being filed 3 years after the measurement and the only object appeared to be to drag on the proceedings. The revision petitioner had encroached into the suit property during the pendency of the suit and therefore the respondent was constrained to amend the suit prayer to include the relief recovery of possession. In these circumstances the respondents sought for the dismissal of the said petition.

9. The learned District Munsif, had on a consideration of the records and the arguments of either counsels, dismissed the application. Aggrieved by this order the revision petitioner is before this Court.

10. Heard the arguments of Mr. Mr. R. Sankarappan, learned counsel for the revision petitioner and Mr. Arjun learned counsel for the respondent.

11. It is the argument of the learned counsel for the revision petitioner that the earlier report was totally wrong since the Taluk

surveyor has not measured the entire extent of S.F.No.294 and had the entire survey field be measured, the truth of the facts would have come to light. He would also submit that the learned District Munsif has overlooked the facts that the petition for revisiting was filed as soon as the earlier report was filed and after objections were submitted by the revision petitioner. The revision petitioners have submitted very detailed objections which runs on the lines of the affidavit filed in support of the present petition. He would further argue that the Taluk surveyor having failed to measure the entire extent of Survey Field No.294, the reports submitted by him that there is an encroachment is undoubtedly a falsity.

12. Per contra Mr. Arjun learned counsel appearing on behalf of the respondents would defend the order of the learned District Munsif contending that the Taluk Surveyor had not only visited the suit property but had also measured both the petitioners as well as the respondents properties and therefore the contention that the S.F.No.294 was not fully measured falls to the ground. The counsel would argue that there is no necessity for revisit.

13. This court heard the counsels on both sides and perused the documents. From the perusal of the earlier Advocate Commissioners

report, it is seen that the Taluk surveyor has made his measurement from the 12 stones found in the suit property and this appears to be the basis on which the entire report had been prepared. The case of the respondent/plaintiff is that she had purchased an extent of 1.15 acres on the southern side of the S.F.No.294 and that this 1.15 acres is from out of the total extent of 2.38 $\frac{1}{2}$ acres. It is the case of the revision petitioners/defendant that the entire extent of 2.38 $\frac{1}{2}$ acres was purchased by them in the year 1993, whereas the plaintiff had purchased the property only in the year 2005. Therefore there was a necessity to measure the entire extent of survey field No.294 and the Revenue Department to fix the boundary stones therein and after this exercise is done the court can come to the conclusion as to whether there is a trespass or encroachment in the respondents property. The reading of the Advocate Commissioner's report does not reflect the point from which the measurement had been done. It appears that the Taluk surveyor has not measured the house sites situated on the Western side, which is also included in S.F.No.294. Therefore, the inspection which has been done without measuring the entire extent is totally wrong and it is also seen that the petition in question has been filed without much delay that too after the Commissioners report was filed into the Court and the revision petitioners had submitted their objections.

14. In view of the above conspectus of the matter, I am of the opinion that the Advocate Commissioner who has been already appointed should be directed to revisit the suit properties and to note down not only the physical features of the suit property and the properties in and around it but also to measure the entire S.F.No.294 of Panikkampatty Village, Palladam Taluk and fix correct boundary stones for both the petitioners and respondents property with the help of District surveyor. The revision petition therefore stands allowed. The learned District Munsif ,Palladam shall issue the warrant to the Advocate Commissioner within two weeks from the date of receipt of copy of this order and the Commissioner shall be directed to submit his report within three weeks from the date of issue of the warrant.

13.12.2018

jrs

Index : Yes/No
Internet: Yes/No

To

The learned District Munsif ,
Palladam

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P.T.ASHA, J,

jrs



**Pre-Delivery Order in
CRP.(PD).No.2019 of 2012**

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