



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.04.2018

Pronounced on : 30.07.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.860 of 2018

and

CMP (MD) No.3748 of 2018

WEB COPY

1.C.Soundarajan
2.C.Namasivayam
3.Muthumanickam
4.Sounther
5.Gowtham

.. Petitioners/Petitioners 2 to 6/
Plaintiff 2 to 6
vs.

Chief Manager,
Tamil Nadu Hotel,
Tamil Nadu Tourism Development Corporation,
Rameswram. .. Respondent/ Respondent/Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and executable order dated 27.02.2018 passed in I.A.No.599 of 2017 in O.S.No.29 of 2010 on the file of Subordinate Court, Ramanathapuram.

For Petitioners : Mr.T.R.Jeyapalam

O R D E R

The petitioners herein as plaintiffs have filed the above suit in O.S.No.29 of 2010 on the file of the Subordinate Court, Ramanathapuram, against the respondent seeking for a decree of declaration of title and consequential decree of permanent injunction in respect of the suit property, as there existed a dispute with regard to identity of the property between the Revision petitioners and the respondent Hotel belonging to Tamil Nadu Tourism Development Corporation.

2.In the said suit, the petitioners herein filed an application under Order XXVI Rule 9 of C.P.C., in I.A.No.124 of 2010 for appointment of an Advocate Commissioner to conduct a local investigation. Accordingly an Advocate Commissioner was appointed by the Trial Court and the learned Advocate Commissioner having inspected the property filed his report before the Trial Court on 14.09.2013. In the meantime, the petitioners 4 to 6, got impleaded in the suit in pursuance to the death of the 1st plaintiff namely C.K.Muthiah.



3. In the said state of affairs the petitioners filed objections to the Commissioner's report along with an application in I.A.No.599 of 2017 on 18.12.2017. However, the Trial Court on misconception of Law and fact by dismissing the said application vide an order dated 27.02.2018, posted the suit for Arguments. Wherefore the petitioners are before this Court by way of this civil revision petition challenging the said order dated 27.02.2018.

4. I heard Mr.T.R.Jeyapalam, learned counsel appearing for the petitioners and perused the entire materials available on record.

5. It is the strenuous contention of the learned counsel for the Revision petitioners, urging to receive their objection filed, that the learned Advocate Commissioner's Report slipped up to mention the actual measurement of the extent of property in which road had been laid in survey no. 129/1A2 and the rest of the portion of the property which are in possession of the petitioners / plaintiffs.

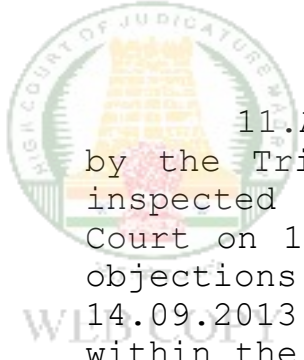
6. The Advocate Commissioner has not mentioned the extent of the property comprised in Survey Nos.129/201 and 129/2C2 and furthermore had also not mentioned as to the extent of property in which the road had been laid in Survey No.129/1A3.

7. According to the revision petitioners those Measurements are material in deciding the lis and hence their application to receive objections is liable to be allowed.

8. Per Contra, it is the contention of the learned counsel for the respondent that though the learned Advocate Commissioner had visited the plaint scheduled property and had filed his report and plan as early as on 14.09.2013 and 10 day further time was granted by the Trial Court to file objections to the Commissioner report, no objection stood filed by the petitioners herein.

9. Whereas after about 4 years the present application in I.A.No.599 of 2017 on 18.12.2017 was filed, that too after recording of evidence of either sides and the suit was posted for arguments. Therefore, the above application filed at a belated stage was intended to cause hardship and devoid of merits.

10. On careful perusal of the records, this Court find that the suit on hand in O.S.No.29 of 2010 on the file of the Subordinate Court, Ramanathapuram, is the one seeking for declaration of title and a consequential decree of permanent injunction in respect of the suit properties comprised in Survey Nos. 129/1A3, 129/3, 129/201 and 129/1A2.



11.As stated above, an Advocate Commissioner was appointed by the Trial Court and the learned Advocate Commissioner having inspected the suit properties filed his report before the Trial Court on 14.09.2013 and it was ordered by the Trial Court to file objections if any within a period of two weeks there from on 14.09.2013. However, the petitioners have not filed any objection within the period stipulated by the Court below.

12.In the said factual background after about four years from the filing of Commission Report, the petitioners have come forward with the above Interlocutory application in I.A.No.599 of 2017 on 18.12.2017 seeking to receive objections to the Commissioner's report.

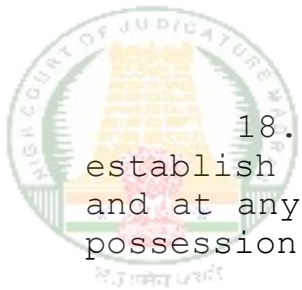
13.On perusal of the corresponding Advocate Commissioner's report dated 14.09.2013 and as well the Objections to be considered vide I.A.No.599 of 2017 dated 18.12.2017 compiled in Typed Set of papers in page Nos.12 and 20 respectively, it is the grievance of the petitioners that there were no measurements noted with respect to the extent of property in which road had been laid in Survey No.129/1A2 and the rest of the portion of the property which are in possession of the petitioners and thereby they sought for re-issuance of Warrant to Advocate Commissioner to re-visit the property and to re-measure the plaint scheduled property and to file his report with plan.

14.The record reveals that in the meantime the suit on hand came to be dismissed for default on 21.08.2013 and later was restored on 21.03.2014 and as such the case stood posted for trial. Thereafter evidence of either side were recorded, in which on the side of the plaintiffs, the 1st petitioner herein as PW1 was examined and there was no objection raised to the report and plan of the Advocate Commissioner even in the chief examination of PW.1 and now the suit stood posted for arguments, therefore this Court finds that the Objection on hand is filed with an inordinate delay at a belated Stage.

15.At this juncture the only question arise before this Court is as to whether non-mentioning of a measurement by the learned Advocate Commissioner would be fatal or adversely affect the case of the petitioners.

16.In my opinion, such non-mentioning of the measurement is immaterial to decide the lis on hand since being the one for declaration and permanent injunction. It is not the case of the petitioners that plaint scheduled property has been encroached upon by the respondent.

17.When title over the entire property comprised in Survey Nos. 129/1A3, 129/3, 129/2C1 and 129/1A2, remains claimed by the petitioners, this Court finds that the non-mentioning of a measurement do not affect the petitioners case.



18. In other words, it is appropriate for the petitioners to establish their Title by adducing oral and documentary evidence and at any cost not by means of establishing their actual physical possession in ground to get their Title declared.

19. The learned Trial Judge has rightly appreciated the above Legal proposition in the facts and circumstances involved in the case on hand and hence I do not find any reason to interfere with the impugned order.

20. Accordingly, the Civil Revision Petition fails and the same is hereby dismissed, by confirming the fair and executable order dated 27.02.2018, passed in I.A.No.599 of 2017 in O.S.No.29 of 2010, on the file of the learned Subordinate Court, Ramanathapuram. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Subordinate Judge,
Ramanathapuram.

+1cc to Mr.T.R.Jeyapalam, Advocate Sr.No.75836

vsv

VB/SKN/SAR3/24.08.2018/4P/3C

**order made in
C.R.P. (MD) (PD) No.860 of 2018
and
CMP (MD) No.3748 of 2018
30.07.2018**