



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) No.1644 of 2014

and

M.P (MD) No.1 of 2014

S.Bhuvaneshwari

Represented by her Power Agent

M.Subramanian

:Petitioner/Petitioner/Plaintiff

vs .

1.Raja

2.R.Parimalalakshmi

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 24.10.2013 in I.A.No.547 of 2012 in O.S.No.10 of 2012 on the file of the District Munsif Court, Theni.

For Petitioner : Mr.R.J.Karthick for

Mr.R.Subramanian

For Respondents : Mr.C.Jegannathan

for M/s.Veera Associates

ORDER

This Civil Revision Petition is directed against the order passed in I.A.No.547 of 2012 in O.S.No.10 of 2012 by the learned District Munsif, Theni.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The revision petitioner herein, as plaintiff, filed the suit in O.S.No.10 of 2012 before the District Munsif Court, Theni for permanent injunction restraining the defendants in the suit from interfering with her peaceful possession and enjoyment of the suit property. The suit property is described as a land measuring an extent of 4364 1/4 sq.ft., with reference to specific boundaries. The case of the plaintiff / revision petitioner is that the suit property originally belonged to one Subramanian Vakaiyara by virtue of a sale deed dated 29.04.1998. It is further



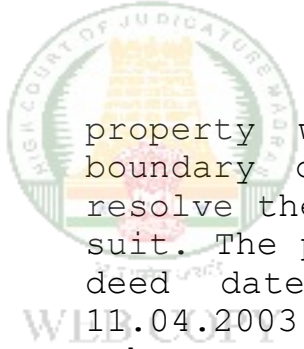
stated that the plaintiff purchased the suit property from them on 11.04.2003. It is also stated that after the plaintiff's vendor purchased the property from one Balagurusamy, by a document dated 29.04.1998, the defendants' vendor purchased the property from one Balagurusamy on 29.06.1998. It was thereafter, the defendants have purchased the property from one Rameswari on 08.09.2003.

2.2.The suit was resisted by the defendants. It is their case, of-course, in the written statement that the property purchased by them was included in a separate patta in respect of 0.0271.0 sq.ft and that a separate patta was also issued to the defendants vide patta No.3006. It is also stated that the plaintiff had earlier filed a suit in O.S.No.225 of 2006 against the original owners without impleading the defendants and, that therefore, the said suit was dismissed. It is further stated that the plaintiff has filed an appeal in A.S.No.72 of 2008, However, it is further stated that the plaintiff later filed an application in I.A.No.146 of 2010 to withdraw the suit and to file a fresh suit (on the same of cause of action). Since, the said petition was allowed on 12.11.2005, it is stated that the present suit has been filed.

2.3.With regard to the boundary description found in the earlier suit, it is contended by the defendants that while describing the suit property, the plaintiff has wrongly given the extent as 4634 1/4 sq.ft. Along with the plaint, the plaintiff filed an application for appointment of Advocate Commissioner to measure the suit property with the help of a surveyor and to demarcate the four boundaries of the suit property and to draw a plan.

2.4.The said petition was dismissed relying upon the judgments of this Court reported in 2010(5)LW-897. In the judgment relied upon by the lower appellate Court, it is stated that there is no need to note the physical features of the suit property or to measure the suit property in all cases as the appointment of the Advocate Commissioner is only to facilitate the proceedings and it is not permissible under law to allow the application for appointment of Advocate Commissioner, merely because, such appointment does not cause any prejudice to either sides. The trial Court further observed that it is not necessary in all cases to appoint the Advocate Commissioner to measure the suit property or to identify the suit property. Aggrieved by the same, the revision petitioner, namely, the plaintiff has filed the above Civil Revision Petition.

3.In this case, it is not in dispute that the suit itself is filed only for a permanent injunction. The suit for injunction is based on title. Both the parties, namely, the plaintiff as well as the defendants claim title through a common owner. Certainly, in this case, the appointment of Advocate Commissioner to measure the



property with reference to the documents of title deed and boundary description, will be relevant and may be useful to resolve the contentious issue that is likely to be decided in this suit. The plaintiff claims title on the basis of document of title deed dated 29.04.1998 and the registered sale deed dated 11.04.2003. The defendants claim title on the basis of a subsequent sale deeds executed on 29.06.1998 and 08.09.2003. In such circumstances, one of the of main issues is the exact property that was purchased by the plaintiff as well as the defendants from the original owner. The same property cannot be sold twice. If the Commissioner finds any overlapping, that will prove the case of plaintiff.

4. Having regard to the nature of dispute, this Court is inclined to allow this petition. As a result, this Civil Revision Petition is allowed and the order in I.A.No.547 of 2012 in O.S.No.10 of 2012 passed by the learned District Munsif, Theni, is set aside and the application in I.A.No.547 of 2017 in O.S.No.10 of 2012 stands allowed. However, it is open to the parties concerned to give their memo of instructions so that the Advocate Commissioner's report will have some real assistance at the time of resolving the issue between the parties. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The District Munsif, Theni.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.R.J.KARTHICK, ADVOCATE IN SR No. 74427
+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 74387

CMR
TE/RP/SAR-3 : 21/08/2018 : 3P/6C

C.R.P. (PD) (MD) No.1644 of 2014
20.07.2018