



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.10.2018

DELIVERED ON : 20.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1814 of 2015

and

M.P. (MD) No.1 of 2015

N.Andal

.. Petitioner

Vs.

Selvaraj

.. Respondent

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order dated 24.06.2015 passed in I.A.No.356 of 2015 in O.S.No.249 of 2012 on the file of the learned District Munsif, Kovilpatti.

For Petitioner : Mr.M.Muthugeethayan

For Respondent : Mr.V.Perumal

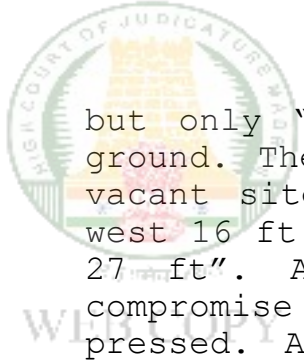
ORDER

Heard Mr.M.Muthugeethayan, learned counsel appearing for the petitioner and Mr.V.Perumal, learned counsel appearing for the respondent.

2.This petition has been filed against the order passed in I.A.No.356 of 2015 in O.S.No.249 of 2012 dated 24.06.2015 on the file of the learned District Munsif, Kovilpatti.

3.The petitioner herein is the plaintiff and the respondent herein is the defendant in the suit. The petitioner herein has filed a suit in O.S.No.249 of 2012 before the learned District Munsif, Kovilpatti for declaration and for injunction. The petitioner herein has filed a petition in I.A.No.356 of 2015 for appointment of a Commissioner and the petition was dismissed by the trial Court. Against the order of dismissal, the petitioner herein has filed the present revision petition.

4.On the side of the petitioner, it is stated that in a previous suit relating to the suit property, the suit schedule property was stated as vacant site "east west 16 ft south north 40 ft". But in the decree, it is stated that "east west 38 ft and south north 19 ¼ ft" was allotted to the mother of the defendants



but only "east west 16 ft south north 12 ½ ft" is available on ground. The suit property was situated at the western part of the vacant site mentioned in the compromise decree and measured "east west 16 ft with western lane of 4 ft" totally 20 ft and "north west 27 ft". As there is difference in measurement stated in the compromise decree and the measurement in the property, E.P. was not pressed. As there is difference in measurement in O.S.No.127 of 1998, the suit schedule property and the compromise decree and the portion of land available on ground, the real measurement of the property could not be proved by way of document or by oral evidence. Hence, the measurement of the property is to be verified with the help of a Commissioner and that appointment of a Commissioner is necessary.

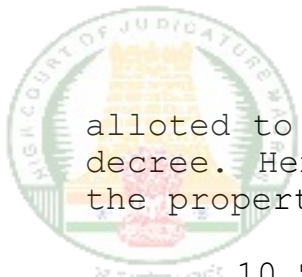
5. On the side of the respondent, it is stated that the petitioner's husband and the respondent's mother and sisters had obtained a decree in O.S.No.127 of 1988. But the petitioner is falsely stating that only a lesser measurement is available on ground. He is insisting the Court Commissioner to measure the property in accordance with the reduced measurement. The petitioner has not filed any appeal to re-open the case. The petitioner has not filed any document to prove that his predecessors are having any right over the property. He has not examined the seller of the property. The motive is to drag on the case. This petition is to be dismissed.

6. On the side of the petitioner, it is stated that the plaintiff has purchased the western side of the property. When the respondent questioned the existence of the property itself, it is the duty of the plaintiff to prove the existence of the property and for proving the existence of the property and to prove the measurement, the appointment of a Commissioner is necessary.

7. On the side of the respondent, it is stated that on 14.03.2015, the evidence on both sides was closed and on 19.03.2015, the Commissioner petition was filed by the petitioner and that the written statement was filed in March 2013 itself and that the compromise decree is not relating to the suit properties. The petitioner has not filed reopen petition and hence the Commissioner petition is also not maintainable.

8. A perusal of the records reveals that when the suit was in the stage of argument, the petitioner has filed a petition for appointment of Commissioner without filing a reopen petition. As there is only a lesser measurement available on ground and hence, the petitioner seeks the appointment of Commissioner.

9. The petitioner who is the plaintiff has to prove his own case and he cannot pick holes in the case of the defendant. In the written statement, the defendant has not denied the existence of the property. In paragraph no.4 of the written statement, it is clearly stated that the suit property is on the western side of the property



allotted to the share of the defendant's mother as per the compromise decree. Hence, there is no question of denial of the existence of the property by the defendant.

10. There is difference in the measurement stated in O.S.No.127 of 1998, the measurement stated in this suit schedule property and in the compromise decree and the portion of land available on ground. The compromise decree was signed by both the parties. In paragraph no.5 of the petition in I.A.No.356 of 2015, the petitioner has stated that the measurement of the suit property which is "east west 16 ft and south north 12 ½ ft" whereas in the paragraph no.6, the property is stated as "east west 16 ft with western lane of 4 ft totally 20 ft and north west 27 ft". The plaintiff has to stand on his own legs and he cannot pick holes in the defendants case. The measurement in the decree will prevail over the measurement stated in the plaint. Moreover, the petitioner has not filed any re-open petition.

11. The suit is pending from the year 2012. In this circumstances, allowing this petition will cause further delay the trial. There is no merits in the petition. The lower Court is directed to dispose of case in O.S.No.249 of 2012 within a period of three months from the date of receipt of copy of this order. With the above direction, the Civil Revision Petition is dismissed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To

1. The District Munsif, Kovilpatti.

Copy to:

1. The Section Officer, Judicial Section,
Madurai Bench of Madras High Court,

+1cc to M/s.D.Srinivasaragavan, Advocate Sr.No.96211

MRN

KM/BK/SAR2/24.12.2018/3P/4C