



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.03.2018

CORAM:

WEB COPY

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.768 of 2014 (PD)
and
M.P. (MD) .No.1 of 2014

1.Thangavelu

2.Malhothra

3.Masco

.. Petitioners /
Respondents 1 to 3 / Defendants 1 to 3

Vs.

1.Thangarajan (died)

.. 1st respondent /
Petitioner / Plaintiff

2.The District Collector,
Court Road, Thanjavur.

3.The Revenue Division Officer,
Revenue Divisional Office,
Pattukkottai.

4.The Thasildhar,
Taluk Office,
Pattukkottai.

.. Respondents 2 to 4/
Respondents 4 to 6 / Defendants 4 to 6

5.S.Sivapackiyam

6.Ilango

7.Geetha

8.Latha

.. Respondents 5 to 8

(R2 to R4 are not necessary parties in the revision and hence, notice on them is dispensed with)

(R5 to 8 brought on record as LR's of the deceased 1st respondent, vide order of this Court dated 18.08.2016, in C.M.P.(MD).No.7338 of 2016 in C.R.P.(MD).No.768 of 2014.)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order of the learned District Munsif, Pattukkottai in I.A.No.554 of 2013 in O.S.No.182 of 2013, dated 07.01.2014.



For petitioners : Mr.H.Arumugam
For respondents 5 to 8 : Mr.N.Balakrishnan
ORDER

This civil revision petition has been filed by the revision petitioners / defendants as against the order passed by the Court below appointing an Advocate Commissioner to measure the suit property.

2.The first respondent has filed the suit in O.S.No.182 of 2013 for declaration and permanent injunction. The suit property originally belonged to the first revision petitioner / 1st defendant and he alienated the suit property by way of a registered sale deed dated 06.06.1983 in favour of one Natarajan, who in turn sold the same in favour of the first respondent / plaintiff by way of a registered sale deed dated 09.12.1983. According to the first revision petitioner / 1st defendant, out of 22 cents of land in S.No.199/9, he had sold only two cents of land in favour of the said Natarajan for discharge of his liability to repay the hand loan and the revision petitioner / 1st defendant has been in possession and enjoyment of the remaining land. According to the first respondent / plaintiff, though his predecessor in title viz., Natarajan has purchased 22 cents by way of registered sale deed dated 06.06.1983 and he has alienated the same in his favour by way of registered sale deed, dated 09.12.1983, in both the said sale deeds, the description of the property has been wrongly mentioned as 2 cents out of 22 cents in S.No.199/9 and 24 cents in S.No.199/5, instead of 22 cents in S.No.199/9. But, the four boundaries are correctly mentioned in the said sale deeds. While so, the first respondent / plaintiff has filed I.A.No.554 of 2013 seeking appointment of an Advocate Commissioner to measure the suit property by correlating the title document and parent document of the 1st respondent / plaintiff viz., sale deeds dated 06.06.1983 and 09.12.1983. The Court below has ordered the said application and appointed an Advocate Commissioner holding that it will be helpful for the Court to decide the dispute. Aggrieved by that order, the respondents 1 to 3 / defendants have filed this civil revision petition.

3. Heard the learned counsel appearing for both sides and perused the records carefully.

4. The issue to be decided in this case is whether 2 cents conveyed or 22 cents conveyed in the sale deeds dated 06.06.1983 and 09.12.1983?. This Court is of the view that the said issue can be decided only by way of oral and documentary evidence and not by way of appointment of an Advocate Commissioner. More over, the title cannot be decided, based on the boundary statement alone. The payment of sale consideration, stamp duty and other records would disclose the extent conveyed. In this case, the appointment of Advocate Commissioner would amount to collecting evidence and the same cannot be permitted as it would be prejudicial to the revision petitioners / defendants 1 to 3. The Court below has erroneously



appointed an Advocate Commissioner to measure the suit property based on the said sale deeds.

5. In view of the above, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

/True copy/

Sd/
Assistant Registrar(RTI)

Sub Assistant Registrar

To

1.The District Munsif,
Pattukkottai.

2.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. **(2 COPIES)**

+1cc to Mr.N.BALAKRISHNAN, Advocate, SR.No.52552

+1cc to Mr.H.ARUMUGAM, Advocate, SR.No. 52781

C.R.P (MD) No.768 of 2014 (PD)
02.03.2018

GCG

KK/KKR/05.04.2018/SAR-1/3P-6C