



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2018

DELIVERED ON : 12.11.2018

CORAM

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

C.R.P. (MD) (PD) No.1743 of 2017

and

CMP(MD)No.9437 of 2017

1.S.Azhageshwari

2.T.Samyappan

.. Petitioners

vs

1. A.Suresh

2. State Government,  
rep. by The District Collector,  
Dindigul District.

3. The Thasildar,  
Natham Town.  
Dindigul District.

4. The Surveyor,  
Reddiyapatti Firka,  
Reddiyapatti village,  
Natham Circle,  
Dindigul District.

.. Respondents

Civil Revision Petition filed under Article 227 of Constitution of India against the order dated 07.04.2017 passed in I.A.No.149 of 2016 in O.S.No.52 of 2016 on the file of the Judicial Magistrate-cum-District Munsif, Natham, Dindigul District so far as the portion of the order passed to the extend of direction to the advocate commissioner to receive the sale deeds and parental deeds from either side and on that basis submit report along with sketch.

For Petitioners : Mr.C.M.Arumugam

For Respondents : Mr.B.Jameel Arasu (for R1)

Ms.VPM.Vaishnavi (for R2 to R4)

Government Advocate

**ORDER**

This revision is directed against the order dated 07.04.2017 of the learned Judicial Magistrate-cum-District Munsif, Natham passed in I.A.No.149 of 2016 in O.S.No.52 of 2016, allowing the petition filed by the plaintiff under Order 26, Rule 9 of CPC.



2. The petitioners are defendants 1 and 2; the 1<sup>st</sup> respondent is the plaintiff and the respondents 2 to 4 are defendants 3 to 5 in the suit.

3. For the sake of convenience, the parties are referred to as per their array in the suit.

4. The plaintiff had filed the suit for declaration and for permanent injunction and also for mandatory injunction directing the defendants 3 to 5 to measure the suit property and to fix boundaries.

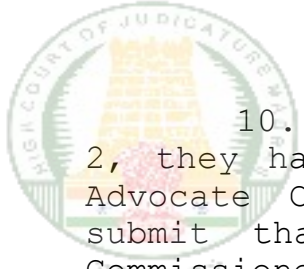
5. In the suit, the plaintiff had filed I.A.No.149 of 2016 under Order 26, Rule 9 CPC seeking to appoint an Advocate Commissioner to measure the suit property and the adjacent S.No.338/1A with the help of Village Administrative Officer and Surveyor based on the sale deeds dated 20.11.1965, 26.02.1963, 30.10.1997, 01.11.2010, 01.09.2005 and 24.08.2009 and file a report.

6. According to the plaintiff, the total extent of suit survey number viz., S.No.338/2 was 1 acre 20 cents, of which, the predecessors in title of the plaintiff have purchased 66 cents. But during UDR scheme, without sale deeds, 25 cents have been included in S.No.338/1A3. It was alleged that the 2<sup>nd</sup> defendant purchased 58 cents in S.No.338/1A, however, by mistake, he was granted patta for more extent. Therefore, it was necessary to appoint an Advocate Commissioner with the help of Village Administrative Officer and the Surveyor to measure the properties of either side based on the sale deeds.

7. Resisting the petition, the defendants 1 and 2 have filed counter stating that measurement could be done only based on the revenue documents and not on the sale deeds of the parties.

8. Upon consideration of the rival submissions, the trial Court appointed Thiru.M.H.Gajamaideen, Advocate as Advocate Commissioner to inspect the suit property with the assistance of Village Administrative Officer and the Surveyor and measure S.No.338/2 (full extent) and S.No.338/1A3 (full extent) based on the revenue documents and file a report. The trial Court has also directed the Advocate Commissioner to collect documents from both the plaintiff and the defendants 1 and 2 and measure their properties and find out as to in which survey numbers, their properties situate. Aggrieved by the order of the trial Court, the defendants have filed this revision.

9. I heard Mr.C.M.Arumugam, learned counsel for the petitioners/defendants 1 and 2 and Mr.B.Jameel Arasu, learned counsel for the 1<sup>st</sup> respondent/plaintiff and also Ms.VPM.Vaishnavi, learned Government Advocate for the respondents 2 to 4/defendants 3 to 5. I have also perused the materials available on record.



10. According to the learned counsel for the defendants 1 and 2, they have no objection for surveying the suit property by the Advocate Commissioner based on the revenue documents. He would submit that the trial Court erred in directing the Advocate Commissioner to collect sale deeds and the parental deed from either side and measure the properties and also find out in which survey number properties were situate. According to the learned counsel, when the defendants 1 and 2 were disputing the sale deeds of the plaintiff, the trial Court ought not to have directed to measure the properties based on the sale deeds of the plaintiff.

11. Per contra, the learned counsel for the plaintiff submitted that in order to resolve the real controversy between the parties, the trial Court has directed the Advocate Commissioner to measure the suit property based on the revenue documents and also based on the sale deeds of both the plaintiff and the defendants 1 and 2. If the Advocate Commissioner visit the suit property and filed the report as directed by the trial Court, no prejudice would be caused to the plaintiff.

12. It appears that the plaintiff had filed the suit for declaration and for permanent injunction in respect of S.No.338/2 measuring 66 cents by showing the same as three items in the suit schedule. It also appears that in the suit, the plaintiff has sought mandatory injunction directing the defendants 3 to 5 to measure the suit property and fix boundaries.

13. On a perusal of the plaint, it has been alleged that there were mistakes in the UDR patta granted in favour of the defendants 1 and 2 and the defendants 1 and 2 were denying ownership of the plaintiff in respect of the suit property. In the plaint, it has been stated that 25 cents has been clubbed into S.No.338/1A3 and issued UDR patta in favour of the defendants 1 and 2. Thus, from the plaint itself, it is clear that there were discrepancies in the sale deeds with regard to survey numbers. While so, the trial Court erred in directing the Advocate Commissioner to collect sale deeds and parent documents from the plaintiff and the defendants 1 and 2 and measure the properties mentioned therein and find out in which survey number the said properties situate.

14. The learned counsel for the defendants 1 and 2 brought to the notice of this Court that the petition seeking interim injunction came to be dismissed by the trial Court on the ground that the plaintiff was not in possession of the suit property. Therefore, the trial Court ought not to have appointed the Advocate Commissioner with a direction to collect sale deeds and parent deeds from either side and measure the properties mentioned therein also. There is some force in the submission of the learned counsel for the defendants 1 and 2.

15. Upon analysis of the submissions made by the learned counsel on either side, this Court finds that the direction on the



Advocate Commissioner to collect sale deeds and parent documents and measure the properties mentioned therein and also fix boundaries of the same is against the settled law. Moreover, the aforesaid direction is only for collection of evidence, which cannot be granted. When the plaintiff filed the suit for declaration to declare that he was the owner of the suit property, it is his bounden duty to establish his title by way of documentary proof. In law, the report of the Advocate Commissioner is not per se evidence, though his report is part of the record. Also, that an Advocate Commissioner's report cannot be the basis for ascertaining the factum of one's title and possession. In other words, the plaintiff cannot seek to improve his title by seeking appointment of an Advocate Commissioner in a suit for declaration of title. In reality, the burden is heavily on the plaintiff irrespective of the Advocate Commissioner's report to prove the factum of title and possession in a suit for declaration and injunction.

16. The sale deeds and the parent documents relied upon by the plaintiff were disputed by the defendants 1 and 2 and same would be decided after full fledged trial. While so, the trial Court ought not to have directed the Advocate Commissioner to collect the sale deeds and parent documents of either side and measure the properties mentioned therein and fix boundaries. The said direction of the trial Court is against law and therefore, the same is liable to be set aside.

17. In the result, the Civil Revision Petition is partly allowed, by setting aside the order of the trial Court dated 07.04.2016 passed in I.A.No.149 of 2016 in O.S.No.52 of 2016 insofar as the the Advocate Commissioner has been directed to receive the sale deeds and parent documents from either side and measure the properties mentioned therein and fix boundaries and also submit a report. The rest of the order and/or directions of the trial Court remain unaltered. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-I)

To  
The Judicial Magistrate-cum-District Munsif,  
Natham, Dindigul District.

+1cc to Mr.B.Jameel Arasu, Advocate Sr.No.95087  
VSV  
VB/SV/SAR1/13.12.2018/4P/3C

order made in  
C.R.P. (MD) (PD) No.1743 of 2017 and  
CMP(MD)No.9437 of 2017  
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