



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 30.01.2018
DELIVERED ON : 28.03.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD)No.2233 of 2017
and
C.M.P. (MD)No.10917 of 2017

Bose : Petitioner/Petitioner /6th Defendant

Vs.

1.Meena :1st Respondent/1st Respondent/Plaintiff
2.Veerayi
3.Krishnan
4.Narayanan
5.Ganesan
6.Petchiammal :Respondents 2 to 6/Respondents 2 to 6/
Defendants 1 to 5

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair Order and Decreetal Order dated 06.09.2016, passed in I.A.No.1594 of 2015 in O.S.No.198 of 2008, on the file of the Principal District Munsif, Aruppukottai and set aside the same.

For Petitioner : Mr.V.Perumal
For Respondents : Mr.P.Sivasubramanian - for R1
: Mr.P.Akkini Thevar - for R2 to R5
: Mr.K.Vadivelan - for R6

ORDER

This civil revision petition has been filed by the revision petitioner challenging the order, dated 06.09.2016, dismissing the petition filed for appointment of an Advocate Commissioner.

2. The 1st respondent / plaintiff has filed the suit in O.S.No.198 of 2008 for partition claiming 1/6th share in the suit properties against the respondents 2 to 6 / defendants 1 to 6, who are the brothers and sister of the 1st respondent / plaintiff and the revision petitioner / 6th defendant who is the subsequent purchaser of a suit 4th item of the property. After completion of the defendants' side evidence, the revision petitioner / 6th defendant has filed I.A.No.1594 of 2015 seeking to appoint an Advocate Commissioner to measure the physical features of the 4th schedule property with the help of a qualified surveyor and Village Administrative Officer and to note down the measurement with the help of existing material factors. The Court below has



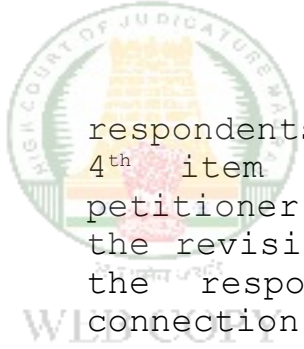
dismissed the said application. Aggrieved by that order, the revision petitioner / 6th defendant has filed this civil revision petition.

3. The learned counsel for the revision petitioner / 6th defendant would submit that he has purchased the suit 4th item of the property by way of a registered sale deed, dated 23.03.2006, from the respondents 2 to 5 / defendants 1 to 4 and he has been in separate possession and enjoyment of the same from the date of purchase. He would further submit that the revision petitioner / 6th defendant has agricultural land and a well on the northern side of the suit 4th item of the property and he has been cultivating the suit 4th item of the property by getting water from the said northern side well through underground pipelines. It is stated by the respondents herein during the cross examination that there is no pipeline available in the suit 4th item of the property and therefore, it is necessary for the revision petitioner / 6th defendant to prove that there is a pipeline connection in the disputed property. Hence, he has filed the said application for appointment of Advocate Commissioner. But, the Court below, without considering the same, has erroneously dismissed the said application and hence, the order impugned in this petition is liable to be set aside. Thus, he prayed to allow this civil revision petition.

4. The learned counsel appearing for the respondents in unison submitted that the revision petitioner / 6th defendant has not filed any document in order to prove that he has agricultural land and well in the northern side of the suit 4th item of the property and he has made pipeline connection to the disputed property. As the suit filed only for partition, the application filed by the revision petitioner / 6th defendant for appointment of Advocate Commissioner is unnecessary and in order to drag on the matter, the revision petitioner / 6th defendant has filed the said petition and the Court below has rightly dismissed the said petition and the same need not be interfered with. Thus, he prayed to dismiss this civil revision petition.

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

6. Admittedly, the suit is filed only for partition. According to the revision petitioner / 6th defendant, he has purchased the suit property from the 4th item of the property by way of a registered sale deed, dated 23.03.2006, from the respondents 2 to 5 / defendants 1 to 4 and he has been in separate possession and enjoyment of the same from the date of purchase and he has been cultivating the said land from getting water from the well on the northern side of his own property through underground pipelines. According to the 1st respondent / plaintiff, the



respondents 2 to 5 / defendants 1 to 4 have no right to sell the 4th item of the suit property in favour of the revision petitioner / 6th defendant. While so, during the examination of the revision petitioner / 6th defendant as DW2, it was disputed by the respondents herein stating that there is no pipeline connection available to the disputed property.

7. It is seen that the revision petitioner / 6th defendant has filed the interlocutory application for appointment of Advocate Commissioner, in order to prove his possession and enjoyment of the suit 4th item of the property by cultivating the same. The possession cannot be proved through the report of the Advocate Commissioner. The possession and enjoyment can be proved only through oral and documentary evidence. The Court below has rightly dismissed the relief sought for by the revision petitioner / 6th defendant and the same does not warrant any interference of this Court.

8. In the result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Principal District Munsif,
Aruppukottai.

Copy to:

The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+ 1 cc TO Mr.P.Sivasubramanian , Advocate in SR No. 59421
+ 1 cc TO Mr.K.Vadivelan , Advocate in SR No. 58783
+ 1 cc TO Mr.V.Perumal , Advocate in SR No. 58654

gcb

AE/SV MMS/SAR3/16.04.2018/3P/7C

order made in
C.R.P. (PD) (MD) No.2233 of 2017
and
C.M.P. (MD) No.10917 of 2017
28.03.2018