



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.12.2017
DELIVERED ON : 06.02.2018

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CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.2146 of 2016 (PD) and
CMP (MD) .Nos.10033 of 2016 and 11483 of 2017

Arivalagan

.. Petitioner/
4th respondent / 4th Plaintiff

Vs .

1.Raja
2.Kamaraj

.. Respondent Nos.1 & 2/
Respondents 1 & 2 / Defendants 2 & 3

3.Elango

.. 3rd respondent /
3rd respondent / 1st defendant

4.Rengasamy
5.Manikandan
6.Rajesh

.. Respondents 4 to 6 /
Respondents 4 to 6 / Plaintiffs 1 to 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 31.08.2016, passed in I.A.No.103 of 2014 in O.S.No.34 of 2014 by the learned Additional District and Sessions Judge, Theni at Periyakulam.

For Petitioner	:	Mr.M.Vallinayagam, Senior Counsel for Mr.S.Sekar
For respondents 1 & 2	:	Mr.P.Sivachandran
For 3 rd respondent	:	Mr.S.Elango (Party in Person)
For 4 th respondent	:	Mr.C.Murugavel
For R5 & R6	:	No Appearance

ORDER

This civil revision petition has been filed by the 4th plaintiff in O.S.No.34 of 2014.

2. The suit has been filed by the revision petitioner, along with three others, seeking the relief of injunction restraining the defendants / their representatives / agents and persons claiming under them from interfering with the plaintiffs' possession and enjoyment of the suit property.



3. Brief facts leading to the filing of this petition are as follows:

(a) The suit properties originally belonged to one Mariammal, wife of S.V.P.Natarajan Nadar. The original owner sold the suit properties in favour of one M.Pasupathi on 05.4.1973. Out of 90 cents, the first plaintiff by the sale deed, dated 03.07.1987, purchased item No.1 of the suit property. The second plaintiff by the sale deed, dated 03.7.1987, purchased item No.2 of the suit property. The third item of the property belonged to 3rd plaintiff by virtue of a settlement deed, dated 20.02.2006, executed by one Thavamani. The 4th plaintiff purchased the 4th item of the property by way of sale deed, dated 03.07.1987. Thus, the plaintiffs are in possession and enjoyment the suit properties from the date of purchase, of which the defendants have no right, title or interest.

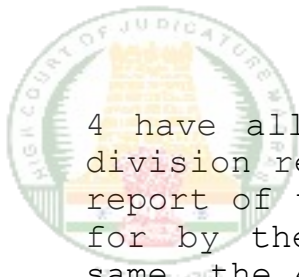
(b) According to the plaintiffs, the first defendant is a businessman and realtor, and at his instigation, the defendants 2 and 3 are claiming right over the suit properties. The 4th defendant wanted the property to be measured and he made a written request also. When the plaintiffs 2 and 3 went for the purpose of measuring the property, they were informed that the property has been already measured. But, the property was not really measured. The rise in the price of real estate have made the defendants to make unfair and illegal claims. So saying the plaint was filed. Subsequently, the plaint has been amended seeking the relief of recovery of possession in respect of item Nos.1, 2 and 3 of the suit properties and also seeking mandatory injunction for the removal of superstructure over those items.

(c) In the suit, the defendants have filed their written statements. During the pendency of the suit, the 2nd and 3rd defendants filed I.A.No.429 of 2007 under Order 26 Rule 9 C.P.C. seeking appointment of an Advocate Commissioner to measure the suit properties with the help of Surveyor. The said application was allowed, appointing one Mr.Manikandan as Advocate Commissioner and the said Commissioner has also filed his report and plan.

(d) Expressing grievance that the properties were not measured properly, the 4th plaintiff filed an interlocutory application in I.A.No.103 of 2014 seeking to scrap the earlier Advocate Commissioner's report, to appoint a new Advocate Commissioner and to direct him to measure the suit properties with the help of Assistant Director of Survey.

(e) Before the Court below, the respondents 1 and 2 herein / defendants 2 and 3 did not file any objection and they remained *ex parte*. The 3rd respondent / 1st defendant filed his objection. The respondents 4 to 6 / Plaintiffs 1 to 3 filed their affidavit in support of the revision petitioner / 4th plaintiff.

(f) The Court below has dismissed I.A.No.103 of 2014 holding that without any oral and documentary evidence, the plaintiffs 1 to



4 have alleged that the defendants 1 to 3 have created bogus sub division records and that there is no sufficient reason to scrap the report of the Advocate Commissioner and therefore, the relief sought for by the 4th plaintiff cannot be considered. Aggrieved by the same, the 4th plaintiff has filed this civil revision petition.

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4. Heard the learned senior counsel appearing for the revision petitioner and the learned counsel appearing for the respondents and perused the records carefully.

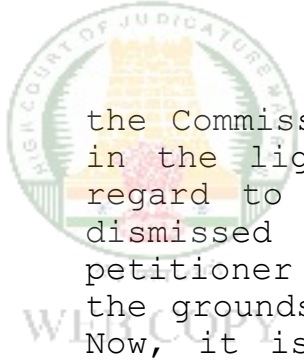
5. When the matter came up "for admission" on 11.11.2016, this Court has granted an interim order of stay for a period of four weeks and thereafter, it was periodically extended.

6. It is brought to the knowledge of this Court by the third respondent / Party-in-person that the revision petitioner / 4th plaintiff by playing fraud and misrepresentation that the earlier Advocate Commissioner is no more and there is no chance for examining him regarding the said variation, etc. in the Commissioner report, has obtained the interim order of stay from this Court.

7. As rightly stated by the third respondent, in ground No.3 as well as in paragraph No.5 of the affidavit filed in support of the interim application, the revision petitioners have stated so. It is seen from the record that after getting the interim order fraudulently, the said counsel has given change of vakalath and handed over the bundle to the present counsel. When it was pointed out to the learned counsel for the revision petitioner, he has filed an amendment petition in C.M.P.(MD).No.11483 of 2017 seeking to delete the said averments in the grounds of revision petition as well as in the miscellaneous petition and also filed an additional affidavit stating that the earlier counsel due to misunderstanding of the pronunciation of the words, while issuing instructions regarding the death of revision petitioner's counsel on record before the Court below, wrongly mentioned that the Advocate Commissioner died in the affidavit and seeking unconditional apology for making such wrong statement.

8. The reason assigned by the revision petitioner is not acceptable. The above act of the revision petitioner as well as the earlier counsel who appeared for the revision petitioner is condemnable and such an act cannot be tolerated. The revision petitioner has been kept silent, till the Court raises such question, which would also prove the indifferent attitude of the revision petitioner. Hence, this Court is not inclined to order the amendment petition. Though this Court is inclined to dismiss the revision petition itself without going into the merits of the same, considering the elongation of time and plight of the respondents, this Court is inclined to dispose of the matter with a cost of Rs.50,000/- payable by the revision petitioner / 4th plaintiff.

9. Considering the grounds of revision, this Court felt that



the Commissioner report have to be considered contextually, that is in the light of the oral and documentary evidence available with regard to the suit properties. The Court below has also rightly dismissed the interlocutory application filed by the revision petitioner holding that without any oral and documentary evidence, the grounds urged by the revision petitioner cannot be considered. Now, it is admitted by the revision petitioner that the Advocate Commissioner is available and hence, there is no difficulty for him to examine the Advocate Commissioner or let in evidence to satisfy that the report is faulty and the same should be scrapped. This Court is of the further view that after examination of the Advocate Commissioner and other witnesses, if the trial Court is satisfied that there is a ground for remeasuring the property, the trial Court may either reissue the commissioner warrant or after scrapping of the commissioner report, appoint new commissioner and call for fresh report.

10. This civil revision petition is disposed of with the above direction, however, with a cost of Rs.50,000/- payable by the revision petitioner / 4th plaintiff to the Legal Services Authority, Madurai Bench of Madras High Court, Madurai, within a period of one week from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Additional District and Sessions Judge,
Theni at Periyakulam.

Copy To:-

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

2. The Officer in-charge,
High Court Legal Services Authority,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.P.SIVACHANDRAN, ADVOCATE IN SR No. 46516
+ 1 CC TO Mr.C.MURUGAVEL, ADVOCATE IN SR No. 46495
+ 1 CC TO Mr.S.SEKAR, ADVOCATE IN SR No. 47035

GCG

TE/JC/SAR-4 : 12/02/2018 : 4P/8C

<https://hcservices.ecourts.gov.in/hcservices/>

order made in
C.R.P (MD) No.2146 of 2016
06.02.2018