



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.07.2018

DELIVERED ON : 23.11.2018

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

C.R.P. (MD) No. 312 of 2016

and

C.M.P. (MD) No. 1296 of 2016

C.Jeyendran .. Petitioner / 1st Petitioner / 1st Defendant

vs

1.N.Sekar

2.T.Bashkar

.. Respondents 1 & 2 / Respondents / Plaintiffs

3.C.Rajadurai

.. 3rd Respondent / 2nd Petitioner / 2nd Plaintiff

Civil Revision Petition filed Article 227 of the Constitution of India, against the fair and decretal order passed in I.A.No.662 of 2014 in O.S.No.239 of 2010 dated 08.09.2015 on the file of the Principal District Munsif, Ambasamudram.

For Petitioner : Mr.H.Arumugam

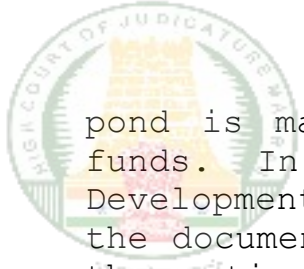
For Respondents : Mr.M.Saravanan (for R1 & R2)

No Appearance - (for R3)

ORDER

This Civil Revision Petition has been filed against the fair and decretal order passed in I.A.No.662 of 2014 in O.S.No.239 of 2010 dated 08.09.2015 on the file of the learned Principal District Munsif, Ambasamudram.

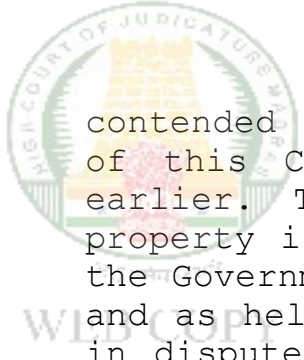
2.The case of the petitioner is that the respondents 1 and 2 herein, as plaintiffs have filed a suit in O.S.No.239 of 2010 on the file of the learned Principal District Munsif, Ambasamudram for the relief of permanent injunction restraining the defendants from interfering with possession and enjoyment of suit property stating that the suit property is the punja land and they are in possession and enjoyment of the same but written statement was filed contending that the suit property is a pond and there are sluice available for irrigation of water from the pond and the



pond is maintained by the Panchayat Union by lending their own funds. In order to prove the existence of Pond the Block Development Officer was examined as DW-2 and summoned to produce the document and he deposed that they are maintaining the pond but the entire document relating to the existence of the pond and other documents were washed away during flood in the year 1993. However the pond was desilted under the S.G.R.Y. Scheme along with other four ponds situated in Pappakudi Union.

3.As the existence of the pond could not be proved by examining the witness and by producing the document, a petition was filed in I.A.No.662 of 2014 to appoint an Advocate Commissioner to note down the physical features of the property with the help of surveyor. Originally the Trial Court dismissed the petition on 20.10.2014 stating that commissioner cannot be appointed to collect the evidence. As against that two revisions in C.R.P.[PD] Nos.404 and 405 of 2015 were filed before this Court and the same were allowed on 17.06.2015 and remanded the application filed for appointment of commissioner with specific observation that the substantial issue that requires to be decided in the suit is to whether the suit property is a punja land or a pond as contended by the petitioner and thus directed the Trial Court that in case the nature of property is in dispute and there are no materials to decide the issue before the Trial Court, necessarily, an advocate commissioner should be appointed. However the Trial Court dismissed again on 08.09.2015 on the finding that there is no dispute about the Survey number and identify of property and as such commissioner cannot be appointed to find out the possession of property and the petition was not filed immediately after filing of written statement but it was filed after examination of defendants witness in the belated stage, which are totally erroneous.

4.The learned counsel for the Petitioner reiterated the grounds raised in the revision petition and submitted that the core issue is as to whether the suit property is a pond or punja land and as directed by this Court the Trial Court should have appointed an Advocate Commissioner to note down the same since the B.D.O. has categorically deposed that the documents relating to the creation of pond were washed away in the flood and particularly when the desilting of pond in the said survey number is admitted. He further submitted that there is no delay since the petitioner made his all efforts to prove the factum of existence of pond by examining the B.D.O. and only on his evidence that the documents were washed away in the flood, the petitioner has no other go filed the petition for appointment advocate commissioner, which cannot be treated as delay in filing the petition, in view of the settled law that the appointment of commission is not collect evidence but to elucidate the facts in issue when no such document is available to prove the nature of property. He further



contended that the present order is against the earlier direction of this Court and it amounts to violation of direction given earlier. The Trial Court has failed to see that identify of property is in dispute since the property is converted as pond by the Government and there are sluices for irrigation for the Ayacut and as held by this Court that in case the nature of property is in dispute and there are no materials to decide the issue before the Trial Court, necessarily, an advocate commissioner should be appointed. Thus prayed to allow the revision petition.

5. On the other hand the learned counsel for the respondents submitted that the suit is for mere injunction over the punja land, where the possession of plaintiff alone to be proved and the defendants cannot canvass anything on the identity of property as pond, thus it is for them to prove by producing necessary documents to prove their title and possession of property and the attempt of defendants are only to collect evidence, which is not permissible under law and the petitioner has not taken any steps before trial and filed the petition to drag on the proceedings and thus trial Court is right in dismissing the petition.

6. I heard Mr. H. Arumugam, learned counsel for the petitioner and Mr. M. Saravanan, learned counsel for the respondents 1 and 2 and perused the entire materials available on record. No representation on behalf of the 3rd respondent.

7. On perusal of plaint and written statement it is clear that the defendants are not claiming any independent title over the suit property but their case is that the suit property was converted as pond by the Government for storage of water and there are sluices available for irrigation of water to the surrounding agricultural land. Whereas the case of plaintiff is that the nature of land is punja land and he is in possession and enjoyment of the same by planting various trees viz Mesquite trees, Neem trees and Tamarind trees. The BDO examined on the side of defendant has also deposed to the effect that the suit property was converted as a pond under PGRY scheme and the Panchayat Union has de-silted the same through its pond however the documents relating to the creation of pond were washed away during flood. Thus after his evidence the petition for appointment of commissioner was filed, which cannot be faulted as filed belatedly but on the other hand it has been filed properly after proving the factum of no records available in the office of Union.

8. In order to decide the issue here, it is relevant to extract the order passed by this Hon'ble Court dated 17.06.2015 in C.R.P. [PD] No. 404 and 405 of 2015, which reads as follows:-



held as follows :-

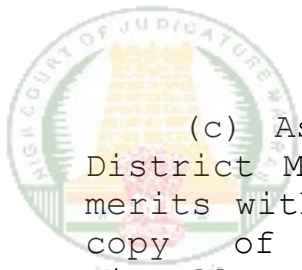
"28. Therefore, as per the Judgment referred by the various Courts, I am of the consider view that absolutely there was no prejudice would be caused to the Respondent/Defendant by appointing an Advocate Commissioner for the purpose of inspecting the property and submit his Report on physical features, measurements, etc. In fact, though the Commissioner cannot decide the dispute, his Inspection and Report would helpful the Court in deciding the dispute. Hence, a local investigation is the best way to find out the position and the party, and coveting the evidence to place before the Court through local investigation by the Commissioner cannot be shut out of their right. Therefore, the appointment of Advocate Commissioner is maintainable in this case, even in the Suit filed by the Petitioner/Plaintiff for Permanent Injunction and accordingly there is necessity for the interference by this Court and accordingly, I am inclined to set aside the Order passed by the learned Principal District Munsif Court, Poonamallee, in I.A. No.1471 of 2012 in O.S. No.121 of 2012, dated 4.7.2013 and a direction is issued to the Trial Court for appointing an Advocate Commissioner.

11.The above judgment is squarely applied to the present case as admittedly the B.D.O. has deposed that the suit property was converted as a Pond under PGRY scheme and the Panchayat Union has de-silted the same through its fund however the documents relating to the creation of pond were washed away during flood. Therefore to decide as to whether the suit property is a Pond as stated by defendants or punja land as stated by plaintiff and as observed by this Court in the earlier revision the appointment of commissioner is very much necessitated. The present case is an exceptional one to the settled principal of law since the commissioner alone can produce the evidence relating to existence of pond for the reason stated above. Thus the impugned order of the trial Court is set-aside.

12.In the result:

(a) This Civil Revision Petition is allowed and the fair and decretal order passed in I.A.No.662 of 2014 in O.S.No.239 of 2010 dated 08.09.2015 on the file of the learned Principal District Munsif, Ambasamudram is set-aside;

(b) The learned Principal District Munsif, Ambasamudram is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, with a direction to the Commissioner to inspect the property and file a report within a period of four weeks thereafter.



(c) As the suit is of the year 2010, the learned Principal District Munsif, Ambasamudram is directed to dispose the suit on merits within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS-II)

To

The Principal District Munsif,
Ambasamudram.

+1cc to Mr.R.J.Karthick, Advocate, Sr.No.96725.

+1cc to Mr.H.Arumugam, Advocate, Sr.No.96759.

order made in
C.R.P. (MD) No.312 of 2016
and
C.M.P. (MD) No.1296 of 2016
23.11.2018

vsv

RAM-ES/RSK/SAR 2/24.12.2018/6P/4C