



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.03.2018

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

CRP (PD) (MD) .No.283 of 2011
and
M.P. (MD) .No.1 of 2011

Family Manager Gurusamy
S/o Chinnayya Devar

.. Petitioner/Petitioner/Plaintiff

Vs.

1.Tamil Isai Arasan (died)

2.Selvaraj

3.Muthu Selvi

4.Mano Ranjan

5.Sivaranjan

6.Vandhana

.. Respondents/Respondents/Defendants

.. Respondents

(Respondents 3 to 6 were brought on record as Legal heirs of the deceased 1st respondent, vide court order dated 09.01.2018, made in M.P. (MD) .No.1 of 2012)

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the fair and decreetal order, dated 20.09.2010 made in I.A.No.404 of 2010 in O.S.No.129 of 2003 on the file of the Principal District Munsif Cum Judicial Magistrate, Lalgudi.

For Petitioner : Mr.P.Thiagarajan

For Respondent 3 to 6 : Mr.C.Jeganathan

For Respondent 1 & 2 : No Appearance

R1 : Died

O R D E R

This Civil Revision Petition has been preferred against the decreetal order passed in I.A.No.404/2010 in O.S.No.219 of 2003 on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

2.The brief facts of the case are that the petitioner has filed the suit in O.S.No.219 of 2003 for permanent injunction in respect of 'A' and 'C' schedule properties and declaration and consequential permanent injunction with regard to 'B' schedule properties. The case was adjourned for defendant's side evidence.



In the circumstances, the petitioner had filed this petition for appointment of Commissioner to inspect the suit premises and note down the physical features with the help of a surveyor and to file a commissioner report so as to prove his case.

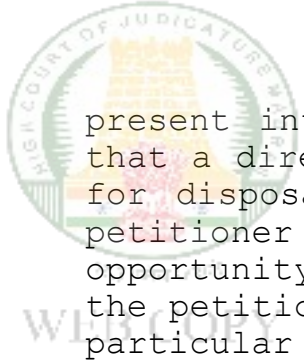
3. The submission of the learned counsel for the respondent before the trial Court is that the suit was posted for arguments and not for defendant's side evidence. Hence at this stage this petition is not maintainable and liable to be dismissed.

4. After analysing the evidence and documents available on record, the trial Court has dismissed the petition. Aggrieved over the same, the petitioner has come forward with this civil revision petition.

5. Heard both sides and perused the documents available on record.

6. I.A.No.404/2010 was filed by the plaintiff for appointment of commissioner to inspect the suit property along with a surveyor and file a plan and report with regard to the suit property. The plaintiff in the suit sought for a relief of permanent injunction against the defendant for permanent injunction and also declaration with regard to B schedule property. On perusal of records, it is observed that the trial in the suit was proceeding and it was in the concluding stage. It is the averment of the petitioner that the water channel found in B schedule property passes through S.No.113/1, 2, 3, 4, 5 & 6 as shown in the plaint plan and then runs in the east-west direction and then north south direction and the same has also been noted in the rough plan. But the defence by the respondent is that the said water channel is not running as shown in the survey plan. It is also the grievance of the petitioner/plaintiff that on the earlier application filed by him for the commissioner report along with assistance of a surveyor, the trial court could not arrive at a decision and the injunction application was dismissed, against which a Civil Miscellaneous Appeal has been preferred and the appellate court also sailed along with the trial Court is finding that without the surveyor plan the course of the water channel which passes through the plaintiff's land could not be identified. The appellate Court has ordered for further proceedings and also granted two months time for disposing of the main suit itself. That order was passed by the appellate court in the year 2003.

7. In Civil Miscellaneous Appeal 24 of 2004, a direction is given that opportunity should be given to the parties for the appointment of commissioner and also allowing them for letting in further oral evidence and the case has to be disposed of within two months. The said order was passed on 25.02.2005. In the trial Court, the trial was proceeding and the evidence by both parties were about to reach the final stage and at that time on 16.07.2010 on which date the evidence by both parties have completed the



present interlocutory application was filed. Hence, it was seen that a direction was given by the appellate court limiting the time for disposal of the suit and a opportunity was also given to the petitioner to proceed further. The petitioner did not avail the opportunity and only after 7 years the said petition was filed by the petitioner which shows that he is not deligent or he is not very particular about proving his case with regard to the right of the water channel for his property. Hence, it is clear that the petitioner has not filed this application with a bonafide intention. If really he has any grievance immediately he could have taken steps. Hence there is no bonafide in filing this application.

8.In the result, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Principal District Munsif cum Judicial Magistrate, Lalgudi.

Copy to:

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

+1CC to M/s.Veera Associates, SR.No. 57031

CRP(PD) (MD) .No.283 of 2011 and
M.P. (MD) .No.1 of 2011
21.03.2018

TM

AM/SV MMS/SAR 3/25.05.2018/3P/5C