



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.07.2018
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

C.R.P. (MD) No.1301 of 2013
and
M.P. (MD) No.1 of 2013

Dhinakaran Nadar

... Petitioner/Plaintiff

vs

Jyothi Silvia

.. Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 12.07.2013 passed in I.A.No.441 of 2013 in O.S.No.63 of 2012 on the file of the District Munsif of Sathankulam.

For Petitioner : Ms.Jessy Jeeva Priya

For Respondent : Mr.C.K.M.Appaji

ORDER

The revision petitioner filed a suit in O.S.No.63 of 2012 on the file of the District Munsif Court, Sathankulam for a declaration that the suit property actually belongs to the plaintiff and for recovery of possession. The suit is also for mandatory injunction to direct the defendant to remove the construction put up by the defendant in a portion of the suit property.

2.The case of the plaintiff is that he is the owner of the suit property having purchased from the original owner one S.P.S.Sundararaj Nadar by a deed dated 13.02.2001. It is stated in the plaint that the defendant has purchased the same property by a subsequent document dated 04.01.2007 from the same vendor and encroached the suit property on the basis of this fraudulent document of sale. It is further stated that the defendant has also put up the construction in the suit property. The suit was contested by the defendant by filing a detailed written statement. It is the specific case of the defendant that the suit property purchased by the defendant is in Resurvey No.607/4B and that he has also put up the construction in the suit property in S.No.607/4B purchased by him. It is to be noted that in the plaint, the suit property is referred to as the property situated in Resurvey No.608/5A in Sathankulam Village. The defendant has also disputed the allegations that he has encroached into the suit property.

3.During the pendency of the suit, the plaintiff filed an application for appointment of an Advocate Commissioner to note down the physical feature and to identify the suit property, so as to



enable the Court to resolve the issue regarding the identity of the suit property and the alleged encroachment by the defendant in the suit property.

4. This application was contested by the defendant on the ground that the plaintiff is trying to collect evidence through the Advocate Commissioner and that the application has been filed when the suit was posted for arguments after completion of trial. By stating this, the interlocutory application was strongly objected by the defendant. The trial Court, considering the fact that the suit was posted for arguments, dismissed the application for appointment of an Advocate Commissioner.

5. The trial Court also observed that the dispute is with regard to the title and therefore, the Court should consider the issue on the basis of oral and documentary evidence and the application for appointment of an Advocate Commissioner is not really helpful in resolving the dispute or deciding the issues in the suit.

6. It is submitted by the learned counsel for the petitioner that the question as to whether the defendant has encroached into the suit property can be effectively adjudicated with the Advocate Commissioner's report and plan with reference to the boundaries.

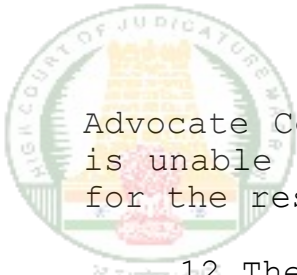
7. The learned counsel for the respondent further contended that the defendant himself has admitted the title of the plaintiff and therefore, there is no dispute with regard to the identity of the suit property.

8. This Court considered the nature of pleadings and dispute regarding the identity of the suit property. The issue whether the defendant has encroached into any portion of the suit property is the main issue in the suit. In these circumstances, the trial Court has dismissed the application for appointment of an Advocate Commissioner for reasons, which are totally irrelevant.

9. Further, the contentions of the respondent in this civil revision petition and before the lower Court are contradictory. As a matter of fact this Court is able to see that the learned counsel for the respondent before the lower Court has taken a stand that the property has been purchased by the defendant. Even, the learned counsel appearing for the respondent before this Court contended the same thing. The boundary description on two sides in the two sale deeds are one and the same.

10. However, the question whether the property purchased by the plaintiff and the defendant under the two documents are different or not, can be decided at the time of trial and the advocate commissioner's report will also be helpful.

11. Though it is further stated by the learned counsel appearing for the respondent that the application for appointment of an



Advocate Commissioner is an attempt to collect evidence, this Court is unable to accept the submission of the learned counsel appearing for the respondent.

12.The contention of the defendant, claiming title on the basis of the sale deed dated 04.01.2007, may be right. The truth and veracity can be decided by the trial Court at the appropriate stage on the basis of evidence. However, in this case, this Court, without any hesitation, is able to see that there is a dispute with regard to the identity of the suit property. Similarly, the question whether the defendant has encroached into the property or not is an important issue and the commissioner's report will be helpful, which has to be taken into account. The documents of title of both the parties will be certainly a piece of evidence before the lower Court to resolve the dispute between the petitioner and the defendant.

13.As a result, this civil revision petition is allowed and the order passed by the learned District Munsif, Sathankulam, dated 12.07.2013 in I.A.No.441 of 2013 in O.S.No.63 of 2012 is set aside and the application in I.A.No.441 of 2013 in O.S.No.63 of 2012 on the file of the District Munsif, Sathankulam, stands allowed. No costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif,
Sathankulam.

COPY TO:

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

+1cc to M/S.N.Subramanian, Advocate SR.No. 71448

+1cc to M/S.C.K.M.Appaji, Advocate SR.No. 71458

C.R.P. (MD) No.1301 of 2013
05.07.2018

mm

JM/RP/SAR 3/24.07.2018/3P/6C