



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (PD) (MD) .No.607 of 2013
and
M.P. (MD) .No.1 of 2013

Dr.Ramesh Arthanari

... Petitioner/Petitioner/Defendant

Vs.

G.Parameswaran

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed has been filed under Article 227 of the Constitution of India praying to set aside the order in I.A.No.388 of 2012 in O.S.No.1002 of 2004, dated 25.09.2012 on the file of the learned District Munsif, Madurai Taluk.

For Petitioner : Mr.A.R.M.Ramesh
For Respondent : Mr.G.Ramapandian

ORDER

This Civil Revision Petition has been filed to set aside the order, dated 25.09.2012 passed by the learned District Munsif, Madurai Taluk in I.A.No.388 of 2012 in O.S.No.1002 of 2004.

2.Heard the learned counsel appearing on either side.

3.The defendant in the suit in O.S.No.1002 of 2004 on the file of the learned District Munsif, Madurai Taluk is the revision petitioner in this Civil Revision Petition.

4.The brief facts that are necessary for disposal of the present civil revision petition are as follows;

4.1 The respondent in this civil revision petition has filed a suit in O.S.No.1002 of 2004 for directing the defendant to surrender vacant possession of the suit property to the plaintiff and for directing removal of all the encroachments made by the defendant by passing a decree of mandatory injunction.

4.2 The suit property described in the plaint is a specific plot in a lay out approved by the Deputy Director of Regional Town Planning Madurai.



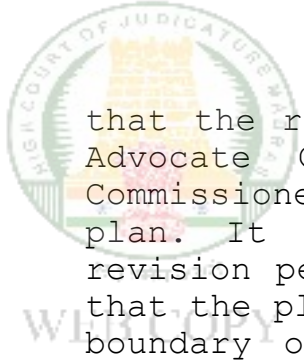
5. In the Written Statement, the Civil Revision Petitioner has specifically stated that it is the property of defendant. The suit property, is described as the western portion of Plot No.21 forming part of a lay-out. The contention that the suit property forms part of the approved lay out is specifically disputed. It is also specifically stated that the plaintiff has filed the suit on the basis of an unapproved lay out plan and that the plaintiff is entitled to the property of the description of plaint only as per the approved lay-out.

6. During the pendency of the suit, the plaintiff filed an application earlier in the year 2004 for appointment of Advocate Commissioner to note down the physical features with reference to the approved lay-out. The defendant had no objection for appointment of Advocate Commissioner and it appears that the defendant also was particular in getting report with reference to the documents of title deeds as well as the approved lay-out. The said petition was ordered with a direction to the Advocate Commissioner to measure the property and identify the property with reference to the approved lay-out as well as the document of title deeds of both sides. However, the Commissioner did not visit the property and no steps were initiated by the respondent to get the report from the Commissioner in-terms of the order passed by the trial Court.

7. Few years later, the respondent herein once again filed I.A.No.261 of 2011 for appointment of Advocate Commissioner. This time also the revision petitioner had no objection as per the counter filed by the revision petitioner. However, the revision petitioner insisted that the commissioner while surveying and locating the part of Plot No.21, the Court should specifically direct the Advocate Commissioner to rely only on the approved lay-out plan. The lower Court passed the following order in I.A.No.261 of 2011;

" Thiru.T.V.K.Suresh Babu (Junior T.K.Thulaisram) is appointed as an Advocate Commissioner to inspect the suit property along with surveyor and to note down the physical features and take measurements of both petitioners and respondents properties on the basis of both parties title deeds, revenue records, approved layout etc., after giving due notice to both parties and to find out whether there is encroachment as alleged by the petitioner or not and to file the report with plan. Remuneration is fixed as Rs.1500/- to be directly. Considering the fact that this is the application and the suit is of the year 2004, the Advocate Commissioner is directed to inspect and file the report within two months."

8. Thus the lower Court has directed the Advocate Commissioner to note down the physical features and take measurements of properties of both parties on the basis of their respective title deeds, revenue records and approved lay-out. It is also to be noted

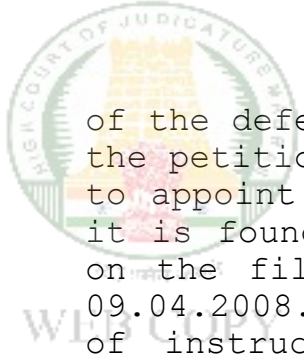


that the revision petitioner has given memo of instructions to the Advocate Commissioner. He specifically requested the Advocate Commissioner to measure the properties as per the approved lay-out plan. It is also seen from the memo of instructions that the revision petitioner has requested the Advocate Commissioner to note that the plaintiff has erected compound wall on all sides as per the boundary of lay-out plan. However, the Advocate Commissioner has submitted a report simply stating that the defendant has encroached into the plaintiff's property to an extent of 243.75 sq.ft. The report is silent as to how the measurements were taken.

9.The Advocate Commissioner report only referred to the property of the plaintiff and there is no reference either to the lay-out plan or to the measurement as per the documents of title deeds of the defendant. After filing objection to the Commissioner Report, the revision petitioner herein has filed the present application in I.A.No.388 of 2012 for scrapping the report of the Advocate Commissioner and for appointment of another Advocate Commissioner with specific directions to note down the physical features and dimensions of the property in the admitted possession of the plaintiff and also to note down the physical features and dimensions of the property in the possession of the defendant. The said application was dismissed by the trial Court, on the ground that the Advocate Commissioner's report clearly shows the measurement of the property which is in the possession of the plaintiff and the measurement of the property which is encroached by the defendant. But, the trial Court is required to see whether the Advocate Commissioner has executed the warrant in the manner directed by the Court. Despite the specific direction by the trial Court, the Commissioner has failed to execute the warrant in terms of the order. From the report, it is impossible for the Court to decide the issue on the basis of rival contentions of the parties.

10.No attempt was made by the Advocate Commissioner to measure the property based on the documents of title deeds of parties and no attempt to identify the suit property with reference to the approved lay-out plan. Thus, the impugned order is liable to be set aside. The trial Court further held that the defendant has not examined the Commissioner to show that both physical features and dimensions which are necessary, were omitted by the Commissioner. To prove that the Commissioner has not filed the report as per the warrant, it is not necessary to examine the Commissioner. The order made in I.A.No.388 of 2012 is therefore liable to be set aside. This Civil Revision Petition is allowed. The Commissioner's report and plan are scrapped.

11.However, it is seen that the petitioner in the Civil Revision Petition has now filed the second application in I.A.No.388 of 2012 to appoint an Advocate Commissioner with specific directions to note down the physical features and dimensions of the property in the admitted possession of the plaintiff and also note down the physical features and dimensions of the property in the possession



of the defendant and to describe Item Nos.1 and 2 of the schedule to the petition. That is not proper. Hence, the trial Court is directed to appoint another Advocate Commissioner with specific direction as it is found in the order in I.A.261 of 2011 in O.S.No.1002 of 2004 on the file of the learned District Munsif, Madurai Taluk, dated 09.04.2008. It is also open to both the parties to give their memo of instructions to the Advocate Commissioner and circulate the documents, which are required by the Advocate Commissioner at the time of inspecting the property.

12.With these directions, the order passed in I.A.No.388 of 2012 is set aside. Accordingly, the Civil Revision Petition is allowed. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Madurai Taluk
Madurai.

+ 1 CC TO Mr.A.R.M.RAMESH, ADVOCATE IN SR No. 71615
+ 1 CC TO Mr.G.RAMAPANDIAN, ADVOCATE IN SR No. 71662

MSA
TE/SV/SAR-2 : 18/07/2018 : 4P/4C

C.R.P. (PD) (MD) .No.607 of 2013 and
M.P. (MD) .No.1 of 2013
05.07.2018