

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD) Nos.3319 & 3320 of 2012 &

M.P.No.1 of 2012 in C.R.P.(PD) No.3319 of 2012

Mr.M.Chenniappan

.. Petitioner

Vs.

1. Mr.Kanniappan
2. Mrs.Ammasiammal
3. Mr.Srinivasan
4. Mr.A.Easwaran
5. The Government of Tamil Nadu
By District Collector,
Collector's Office,
Erode.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal Order dated 16.04.2012 made in I.A.No.1227 & 1228 of 2009 in O.S.No.122 of 2004 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For petitioner : Mr.M.Guruprasad

For Respondents : Mr.T.Sundarrajan – R1 to R4
Mr.N.Manikandan,
Govt. Advocate – R5

COMMON ORDER

The Civil Revision Petition in C.R.P.No.3319 of 2012 has been filed against the Order passed by the trial Court for summoning the Taluk Deputy Surveyor to examine him as a witness on the side of the plaintiff and Civil Revision Petition in CRP No.3320 of 2012 has been filed against the Order of the trial Court for re-issuance of the Commissioner Warrant to the Commissioner to revisit the property and to file a report.

2. The learned counsel for the revision petitioner submitted that the suit has been filed for declaration and for permanent injunction and the plaintiff has clearly stated in the plaint that the Survey No. is 189 of 16 is the suit property. Therefore, the applications have been filed only to gather evidence by appointing Advocate Commissioner once again. Similarly, there is no need to examine the Taluk Surveyor as Ordered by the trial Court and hence, submitted that the Order of the trial Court needs interference.

3. The learned counsel for the respondents submitted that the suit has been originally filed for declaration and injunction in respect of Survey No.189 of 16. An Advocate Commissioner has also been appointed and he has also filed a report. It appears that the defendant has filed objections stating that Survey No.189 of 16 has not been properly measured. Therefore, the application has

been taken out by the petitioner on the ground that the suit property is a natham land and patta also stands in his name in R.S.No.189 of 16. But in the Surveyor plan it is shown as R.S.No.189 of 10 and only to clarify this aspect, the surveyor examination is necessary.

4. The above application has been objected by the defendants on the ground that when the Government itself is a party and they also state that there is a discrepancy in the boundaries, there is no necessary for the Taluk Surveyor to explain the same. However, the trial Court has allowed the application for summoning the Taluk Surveyor as a witness. Similarly, considering the objections filed by the revision petitioner for re-issuance of the Commissioner Warrant to the Commissioner to revisit the suit property is also ordered.

5. Heard the learned counsel for the revision petitioner and the learned counsel for the respondents and perused the materials available on record.

6. The dispute between the parties is primarily with regard to the natham land in Survey No.189 of 16. It appears that though patta stands in the name of the plaintiff, in the plan, the plaintiff's property is shown as different survey number. Only to examine the Taluk Surveyor with regard to such discrepancy, he has filed an application to summon him as a witness. Hence, I am of the view that the parties are entitled to summon any witness to prove their case and

summoning the said witness will not cause any prejudice to the revision petitioner. The revision petitioner always have the right of cross examination. Therefore, I do not find any error or infirmity in the Order passed by the trial Court.

7. Similarly, the trial Court has Ordered re-issuance of warrant only for clarification of the discrepancy, which will enable the Court to decide the lis properly. When the Court itself re-issues warrant considering the entire facts and circumstances of the case for enabling the Court to arrive at a just conclusion, such Order does not require any interference.

8. Accordingly, these Civil Revision Petitions are dismissed and the Order of the trial Court is confirmed. Further, the trial Court is directed to dispose of the suit in O.S.No.122 of 2004 within a period of three months from the date of receipt of a copy of this Order. Consequently, the connected miscellaneous petition is closed. No cost.

सत्यमेव जयते

14.03.2019

vrc

To

The District Munsif cum Judicial Magistrate,
Perundurai.

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N.SATHISH KUMAR, J.

vrc



CRP.(PD) Nos.3319 & 3320 of 2012

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