

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 06.09.2019

ORDER PRONOUNCED ON : 27.09.2019

CORAM:

THE HON'BLE MR. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) Nos.3972 & 3649 of 2013 and
M.P.Nos.1 & 1 of 2013

Gandhi
Maanu

Petitioner in CRP No.3972 of 2013
Petitioner in CRP No.3649 of 2013

Vs

B.S.Gundan

Respondents in both CRPs

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal orders dated 19.06.2013, passed in I.A.Nos.652 and 653 of 2012 in OS.Nos.63 and 64 of 2011, respectively on the file of District Munsif, Udhagamandalam.

For Petitioners (in both CRPs) : Mr.S.Rajmakesh

For Respondent (in both CRPs) : Mr.R.U.Dinesh Rajkumar

COMMON ORDER

These Civil Revision Petitions have been preferred against the orders dated 19.06.2013, passed in I.A.Nos.652 and 653 of 2012 in OS.No.63 of 2011 and 64 of 2011, respectively by the learned District Munsif, Udhagamandalam.

2. The petitioners herein are the defendants in OS Nos.63 and 64 of 2011 on the file of District Munsif, Udhagamandalam. Aggrieved over the orders passed in IA.Nos.652 and 653 of 2012, the petitioners/defendants are before this Court with these Civil Revision Petitions.

3. Before the trial Court, the respondent herein has filed Suits in OS Nos.63 and 64 of 2011, as against the petitioners and seeks the relief of declaration, declaring that the plaintiffs are the absolute owners of the property and for the relief to direct the defendants/petitioners herein to deliver the vacant possession of the suit schedule property.

4. During the pendency of the above mentioned suits, the petitioners herein have filed applications in IA Nos.653 of 2012 and 652 of 2012 under order 26 Rule 9 of Civil Procedure Code, to appoint Advocate commissioner to identify the suit properties along with Government surveyor.

5. The learned District Munsif, Udhagamandalam after hearing arguments advanced by either side, holding that the applications filed by the petitioners are in belated stage and also the purpose of the applications filed by the petitioners is only for collecting the evidence and

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the same cannot be entertained and ultimately, the learned District Munsif has dismissed both applications.

6. Aggrieved over the said findings, the petitioners are before this Court, with these Civil Revision Petitions.

7. The learned counsel appearing for the petitioners in both Civil Revision Petitions would contend that the learned District Munsif has merely dismissed the applications, without considering the fact that the suit has been filed by the respondent/plaintiff by mentioning the another survey number, and wrong door number. According to him, the same is erroneous in law. He has further stated only for physical verification, the identity of the property has to be ascertained and thereby the appointment of Advocate Commissioner is necessary.

8. The learned counsel appearing for the respondent/plaintiff would contend that only for the purpose of collecting the evidence to prove his case, the defendants have filed applications in IA Nos.652 and 653 of 2012. In otherwise, the case of the plaintiffs in O.S.Nos.63 and 64 of 2011 is purely on the basis of the sale deeds dated 16.02.1954 25.09.1959 respectively.

9. The submissions made by the learned counsel appearing on either side are considered.

10. Suits in OS.Nos.63 and 64 of 2011 have been filed for the relief of declaration and injunction, the basic and primary duty of the plaintiffs in both Suits is to prove their title and possession. As per the plaintiffs' averments, the father of the plaintiffs have purchased the suit properties vide sale deed dated 06.02.1954 and 25.09.1959 respectively, which are marked as Ex.A.1 before the trial Court. In the impugned order passed in IA.No.652 of 2012, the learned District Munsif has clearly held that as far as Ex.A.1, Sale deed in OS.No.63 of 2011 is concerned, admittedly the house within the extent of 0.03 acres is situated in SF No. 26 and the respondent has also sought for the plaint relief in respect to SF No.26 of Balacola village. In the same way, in the impugned order passed in IA.No.653 of 2012, the learned District Munsif has clearly held that as far as Ex.A.1, Sale deed in OS.No.64 of 2011 is concerned, admittedly the house within the extent of 0.02 acres is situated in SF No. 26 and the respondent has also sought for the plaint relief in respect to SF No.26 of Balacola village. In the said circumstances, on going through the written statements filed by the defendants in both Suits, it reveals that before the trial Court, the defendants have clearly mentioned in paragraph 7 that in a meeting held in the village, in the presence of elders, the defendants were orally advised to vacate the Suit schedule property, to

which, the defendants have also agreed and sought for few months time in order to do so. The said averment is nothing but clearly reveal the fact that the defendants have admitted the case of the plaintiff. As per the said averment, the defendants have not claimed any right over the Suit schedule property. Even after admitting the title as above, they have filed the application to appoint the Advocate Commissioner for the reasons best known to them.

11. This provision is not a tool, which is permitted to be used by the parties concerned to create the evidence in their favour. This important aspect of the matter has also been cited by the learned trial court, and he has dismissed the applications filed by the petitioners.

12. In view of the above discussions, it cannot be said that the impugned orders are having the material irregularity. The orders passed by the District Munsif in IA.Nos.652 and 653 of 2012 stand correct. Accordingly, these Civil Revision Petitions are dismissed. No costs. Connected Miscellaneous petitions are closed.

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To

The District Munsif, Udthagamandalam.

R.PONGIAPPAN, J.,

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**Pre-delivery Common order in
Civil Revision Petition (PD) Nos.3972 & 3649 of 2013 and
M.P.Nos.1 & 1 of 2013**

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