

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.09.2019

PRONOUNCED ON : 20.09.2019

CORAM

THE HONOURABLE Mr.JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.867 of 2013
and M.P.No.1 of 2013

V.V.Shanmugam

... Petitioner

Vs

1. T.Jayalakshmiammal
2. T.Devarajan
3. T.Sasikumar @ Chockalingam
4. Minor Haripriya
5. Minor Durga
6. Minor Sindhu

Minors 4 to 6 are represented
by their father and natural
guardian 2nd respondent

T.Devarajan

7. Minor Suriya
 8. Minor Gayathri
- Minors 7 & 8 are represented
by their father & natural
guardian 3rd respondent

T.Sasikumar

9. Saradha
 - 10.Vijayalakshmi
 - 11.Minor Rajinikumar
- rep. by his mother and
natural guardian 9th
respondent Saradha

- 12.Kanakavalli
- 13.Jothi
- 14.M.Sivalinga Reddy
- 15.All Bagar

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 07.11.2012 in I.A.No.980 of 2012 in O.S.No.216 of 2008 on the file of the learned District Munsif, Tiruttani.

For Petitioners : Mr.G.Jeremiah

For Respondent : No appearance

ORDER

Aggrieved over the order dated 07.11.2012, passed in I.A.No.980 of 2012 in O.S.No.216 of 2008 on the file of the learned District Munsif, Tiruttani, the petitioner, who is the plaintiff in the said suit filed this Civil Revision Petition.

2. Before the trial Court, the petitioner filed a suit in O.S.No.216 of 2008 and sought for a relief of declaration declaring that he is the absolute owner of the suit property and for recovery of possession and also for delivering the vacant possession of the plaint schedule property after removing the superstructure or any construction made in the suit property. Pending the suit, the petitioner has filed an application under Order 26 Rule 9 of C.P.C., to appoint the Taluk Surveyor of Tiruttani Taluk to inspect the suit property and to measure the same and to localize and fix where exactly the purchased property of 2.92 acres by the petitioner stands in S.No.209/11, that is whether it falls in S.No.209/11A or in 209/11B or in both. The learned District Munsif, Tiruttani after affording opportunity to the defendants dismissed the application filed by the petitioner/plaintiff. Having aggrieved

over the same, the petitioner is before this Court with the present Civil Revision Petition.

3. The learned counsel appearing for the petitioner would contend that the petitioner/plaintiff had purchased the suit schedule property vide sale deed dated 07.03.1975. According to him, the petitioner is in continuous, uninterrupted, exclusive possession and enjoyment of the same by paying kist to the Government under Patta Nos.729 and 860. For declaration of his right, title and interest over the suit property, the petitioner filed a suit in O.S.No.216 of 2008 before the learned District Munsif, Tiruttani. Pending suit, the petitioner has got a doubt regarding the survey number of the suit schedule property and hence he filed an application in I.A.No.980 of 2012 to appoint the Taluk Surveyor of Tiruttani Taluk to inspect the suit property and to measure the same and to localize and fix where exactly the purchased property of 2.92 acres by the petitioner. The learned District Munsif without considering the facts of the case dismissed the application filed by the petitioner.

4. On perusal of the document, it is seen that in the affidavit filed in support of the application filed by the petitioner, he has stated that he got doubt whether he purchased the property of 2.92 acres wholly falls in the first item in S.No.209/11A or wholly falls in the second item in S.No.209/11 B or

partly falls in first item and partly falls in the second item. The said averments set out by the petitioner disclosed the fact that the petitioner has approached this Court without any definite case. In this case, for granting the relief of declaration, it is necessary to see as whether survey number mentioned in the plaint is in reference to suit schedule property found in the plaint. The petitioner has filed the said suit only after mentioning the survey No.209/11A and No.209/11B. He has also mentioned the extent of the land as 0.61.5 and 0.96.0. After mentioning the extent of the property and the survey numbers as above, he himself doubted the extent mentioned in the plaint is in the survey number mentioned in the plaint or not. The said aspect is nothing but fatal to the case of the petitioner.

5. In this regard, the learned counsel appearing on behalf of the petitioner would rely upon the judgment reported in **2003(1) CTC 321** in the case of **P.R.Chockalingam Vs. M.Pichai and another** and also the judgment reported in **2000(6) SCC 389** in the case of **Shreepat Vs. Rajendra Prasad & ors.** In the above referred judgments, the Hon'ble Apex Court and this Court had decided that for identifying the suit property the appointment of Advocate Commissioner is necessary.

6. Now applying the said principle to the case on hand, in the suit filed by the petitioner/plaintiff, he has mentioned the description of the

property with the four boundaries, he has also mentioned the extent of suit property. If suppose the petitioner has doubt about the extent found in the suit survey number, necessarily he has to file a suit for demarcation. The only remedy available to the petitioner is to file a suit for demarcation. But the petitioner has filed a suit for the relief of declaration of the suit schedule property. Hence, after praying the relief as above, measuring the property is no way helpful to the case of the petitioner/plaintiff. Therefore, for the reasons stated above, I am of the opinion that the intervention of this Court is not necessary in the order passed by the learned District Munsif, Tiruttanni.

7. Accordingly, this Civil Revision Petition stands dismissed. However, liberty is given to the petitioner/plaintiff for filing suit for demarcation. Consequently, connected miscellaneous petition is closed. No costs.

Index :Yes/No
Internet :Yes/No
Speaking order/Non-speaking order

rts

20.09.2019

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R.PONGIAPPAN, J

rts

To

The District Munsif,
Tiruttani



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