

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRP(PD) No.876 of 2013 and

M.P.No.1 of 2013

1. Sulochana
2. Sangeetha Priya

... Petitioners

Vs.

1. Radhakrishnan
2. Samuel David Daniel

... Respondents

PRAYER: Civil Revision petition filed under Article 227 of the Constitution of India against the orders dated 24.02.2012 passed in I.A.No.348 of 2011 in O.S.No.83 of 2011 by the Principal District Munsif, Tiruvannamalai.

For Petitioners : R.Rajarajan

For Respondents : No appearance

ORDER

The civil revision petitioners are the plaintiffs in O.S.No.83 of 2011 on the file of the Principal District Munsif, Tiruvannamalai. They filed the suit for declaration of their title to the suit A schedule property and also for a permanent injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment of the A schedule property. They further prayed for a direction to the Sub Inspector of Police, Kilpennathur Police Station to take criminal proceedings against the respondents/defendants 1 and 2 for obtaining a collusive decree against the third defendant in O.S.No.88 of 2010 on the file of the Subordinate Judge, Tiruvannamalai.

2. The respondents/defendants filed their respective written statements and both the parties went for trial. The respondents/defendants 1 and 2 filed a petition in I.A.No.348 of 2011 under Order XXVI Rule 9 of the Code of Civil Procedure praying to appoint an Advocate Commissioner to measure the property in S.No.78/3 of Vazhuthangulam Village, Kilpennathur, Tiruvannamalai District measuring 6.92 cents with the help of a Taluk Surveyor, which according to them has been sub divided as S.No.78/3A, 78/3B. 78/3C and 78/3D.

3. In the petition in I.A.No.348 of 2011 in O.S.No.83 of 2011, the respondents/defendants 1 and 2 contended that the revision petitioners/ plaintiffs have wrongly described the suit property in the plaint and that though survey number 78/3 has been subdivided as 78/3A, 78/3B, 78/3C and 78/3D, the same has not been indicated in the plaint. It is their further contention that the total extent of the land in S.No.78/3A and 78/3C together is 70 cents for which a patta bearing No.821 was issued to one Mohanan, from whom they purchased the said property. According to the respondents/ defendants 1 and 2, the plaintiffs do not have any title over the land in S.No.78/3B and 78/3D and that infact they are in possession of the said property. Therefore, they prayed for appointment of an Advocate Commissioner to inspect the suit property and to measure the same with the help of a Taluk Surveyor.

4. The present revision petitioners/plaintiffs filed their counter denying all the allegations of the respondents/defendants 1 and 2. According to them, they purchased the 'A' schedule property through a registered sale deed dated 28.06.2010 from one Arivazhagan. It is their contention that the defendants 1 and 2 based on a sale agreement entered into between them and the 3rd defendant, filed a collusive suit in O.S.No.88 of 2010 before the Subordinate Judge, Tiruvannamalai and obtained an

exparte decree in their favour. Their further contention is that the respondents/defendants 1 and 2 claim title to the property in S.No.78/3B and 78/3D through two sale deeds dated 04.09.2006 and 26.09.2006 executed by one Mohanan in their favour and according to them the said Mohanan did not have any valid right over the property in S.No.78/3B and 78/3D. They would therefore contend that appointment of an Advocate Commissioner is totally unnecessary for resolving the dispute between the parties.

5. The learned Principal District Munsif, Tiruvannamalai, after analysing the evidence on record, allowed the application filed by the defendants 1 and 2 vide her fair and decreetal order dated 24.02.2012 by appointing an advocate commissioner to inspect the suit property and measure the same with the help of a taluk surveyor mainly on the ground that such an appointment of an advocate commissioner would not prejudicie/hamper the interest of the revision petitioners/plaintiffs. Aggrieved over the same, the present civil revision petition is filed.

6. Mr.R.Rajarajan learned counsel appearing for the revision petitioners contended that the point which has got to be decided in the suit in O.S.No.83 of 2011 is that whether the plaintiffs have title over the 'A' schedule property by means of a sale deed dated 28.06.2010 or whether the

defendants 1 and 2 have title over 0.70 cents in S.No.78/3B and 78/3D as alleged by them and that in order to resolve this dispute, appointment of an Advocate Commissioner is totally unnecessary. His contention is that the trial court without considering the matter in issue, had appointed an Advocate Commissioner. He would therefore contend that the revision petition is liable to be allowed.

7. No appearance on behalf of the respondents.

8. A perusal of the plaint in O.S.No.83 of 2011 shows that the revision petitioners/plaintiffs claimed title over the 'A' schedule property through a registered sale deed dated 28.06.2010 executed by one Arivazhagan in their favour. The property purchased by the plaintiffs through the registered sale deed dated 28.06.2010 is 3.46 acres out of 6.92 acres in S.No.78/3. It is their further contention that the defendants 1 and 2 purchased the remaining extent of 3.46 acres out of 6.92 acres under two registered sale deeds dated 04.09.2006 and 28.06.2006 from their previous owners. According to the plaintiffs, the 3rd defendant in collusion with the defendants 1 and 2 created an unregistered agreement of sale dated 29.04.2009 agreeing to transfer the 'A' schedule property in favour of the respondents/defendants 1 and 2 and based on the said fabricated document,

the defendants 1 and 2 filed a suit in O.S.No.88 of 2010 before the Subordinate Judge, Tiruvannamalai for specific performance of contract. It is further alleged in the plaint that since the 3rd defendant did not appear before the court, an exparte decree was passed in O.S.No.88 of 2010 and based on that, the defendants 1 and 2 have also filed an execution petition for delivery of vacant possession of 'A' schedule property.

9. The respondents/ defendants 1 and 2 resisted the suit on the following grounds.

(i) The land in S.No.78/3 has been sub divided as 78/3A, 78/3B, 78/3C and 78/3D and that the plaintiffs have no title or possession over the entire 'A' schedule property.

(ii) The property under new S.No.78/3B and 78/3D measuring 0.70 cents belonging to one Mohanan and through him, they have purchased the suit property.

(iii) The respondents/plaintiffs cannot seek for a declaration of their title to 0.70 cents in the 'A' schedule property.

(iv) The defendants 1 and 2 entered into a sale agreement with the 3rd defendant to purchase the 'A' schedule property and also paid an advance amount and that since the 3rd defendant had refused to execute a sale deed, they filed a suit in O.S.No.88 of 2010 before the Subordinate

Judge, Tiruvannamalai for specific performance of contract and the suit was also decreed.

(v) The plaintiffs were also aware of the suit in O.S.No.88 of 2010 as the 3rd defendant is their vendor and they filed the present suit suppressing all the facts and therefore, the suit is liable to be dismissed.

10. The entire perusal of the plaint and the written statement shows that the dispute which has to be resolved in the suit is whether the plaintiffs have got title over the 'A' schedule Property, as per the sale deed dated 28.06.2010 executed by Arivazhagan?

11. It is to be pointed out that originally the entire extent of land measuring 6.92 acres in S.No.78/3 of Vazhuthalangunam Village, Kilpennathur, Tiruvannamalai belonged to one Duraisamy Chettiar and others, who sold the same in favour of one Pottu Kannan and others through a registered sale deed dated 06.01.1979. The said Pottu Kannan and others sold the said property in favour of Elangovan, Arumugam and Subramani under two registered sale deeds dated 12.02.1987, who in turn sold the same to one Hemalatha under two registered sale deeds dated 15.04.1987. The said Hemalatha executed a General Power of Attorney in favour of Elangovan authorising him to transfer 6.92 acres of land under the registered

deed of power of attorney dated 03.10.2008. The Power of Attorney of Hemalatha sold the property infavour of Arivazhagan through a registered sale deed dated 09.09.2009 and the said Arivazhagan sold the 'A' schedule property in favour of the plaintiffs under a registered sale deed dated 28.06.2010. While the plaintiffs have purchased the property measuring 3.46 acres out of 6.92 acres in S.No.78/3, the defendants 1 and 2 have purchased the remaining 3.46 acres out of 6.92 acres in the same survey number.

12. The specific contention of the defendants 1 and 2 is that the suit 'A' schedule property has not been described properly and that apart from purchasing 0.70 cents in S.No.78/3B and 78/3D from one Mohanan, they have also entered into a sale agreement with Elangovan/the 3rd defendant in the suit and also obtained an order of decree in the suit in O.S.No.88 of 2010 for specific performance of contract. Therefore, the dispute involved in the present case is whether the plaintiffs have got title over the 'A' schedule property through a registered sale deed 28.06.2010 and that they are in possession of the same. The contentions raised by both the parties mainly revolve around various documents to be adduced by them. Therefore, appointing an advocate commissioner to measure the suit property with the help of a taluk surveyor may not be necessary as far as the

present case is concerned. The learned Principal District Munsif, Tiruvannamalai, without considering the rival submissions made by the plaintiffs and the defendants had appointed an Advocate Commissioner merely on the basis that no prejudice would be caused to the plaintiffs by appointing an advocate commissioner. Therefore, the fair and decreetal orders passed by the trial court is liable to be set aside.

13. In the result,

(i) The Civil Revision Petition is allowed. No costs. The connected miscellaneous petition is closed.

(ii) The fair and decreetal orders dated 24.02.2012 passed in I.A.No.348 of 2011 in O.S.No.83 of 2011 by the Principal District Munsif, Tiruvannamalai is set aside.

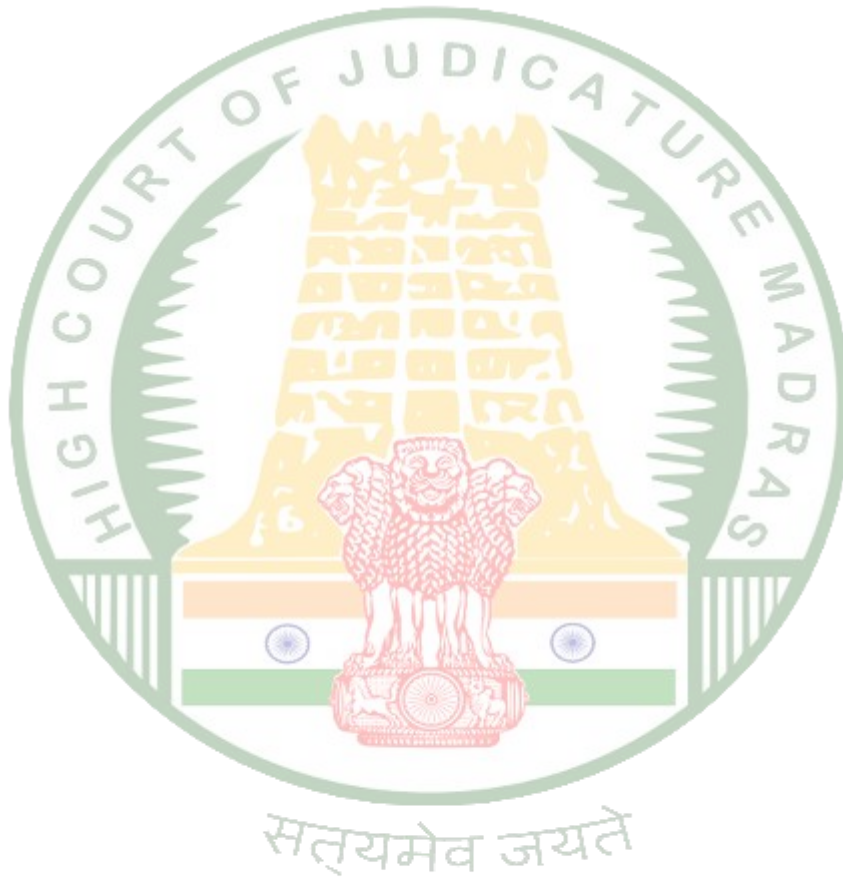
(iii) Since the suit is of the year 2011, the learned Principal District Munsif, Tiruvannamalai is directed to post the matter on day today basis and dispose of the same within two months from the date of receipt of a copy of this order.

19.08.2019

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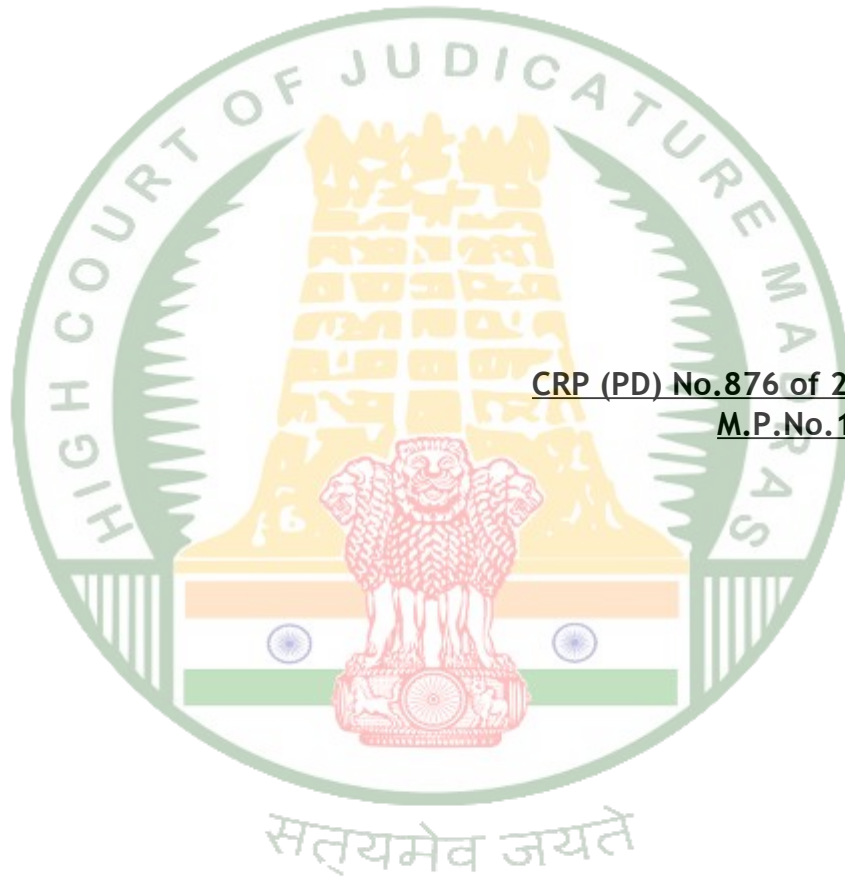
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