

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.1277 of 2014
and
M.P.No.1 of 2014

A.Govindasami

Petitioner

Vs

1. The Collector
Cuddalore District
Cuddalore

2. The Director of Tsunami Rehabilitation
Chennai

3. The Project Officer
Tsunami Rehabilitation District
Rural Development Agency
Cuddalore – 1

4. Settudurai

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order dated 08.11.2013 made in I.A.No.1234 of 2011 in O.S.No.98 of 2011 on the file of Additional District Munsif Court, Cuddalore.

For Petitioners : Mr.D.Baskar

For Respondents : R1 to R3 – Mr.A.Devnarendar
Government Advocate

For R4 – No Appearance

ORDER

Aggrieved over the order passed in IA No.1234 of 2011 in OS No.98 of 2011 on the file of Principal District Munsif, Cuddalore, the petitioner herein, who is the plaintiff in the said suit has filed this Civil Revision Petition and prayed to set aside the order passed in IA No. 1234 of 2011.

2. Before the trial Court, the petitioner herein as a plaintiff has filed a Suit OS No.98 of 2011 as against the respondents and seeks the relief of declaration, declaring that the plaintiff is the absolute owner of the suit schedule property, consequently, he prayed for the relief of injunction restraining the respondents/defendants in interfering with his peaceful possession and enjoyment of the suit property. Alternatively, he prayed for the relief to direct the defendants to deliver the possession of suit property to him along with any building that may be constructed.

3. During the pendency of the trial, the petitioner herein filed an application under Order 26 Rule 8 and 9 of Civil Procedure Code and prayed to appoint an Advocate Commissioner to note down the physical features of the suit property and to file his report and plan.

4. The learned Additional District Munsif, Cuddalore in its order dated 08.11.2013, dismissed the application filed by the petitioner by saying that the petitioner has filed the application only for the purpose of collecting the evidence.

5. Challenging the said order, the petitioner is before this Court with the present Civil Revision Petition.

6. The learned counsel appearing for the petitioner would contend that the 4th respondent herein with a malafide intention after getting two ration cards for a single family and got permission from 1st to 3rd respondents for construction of two houses, which is against the norms fixed by the Government, in respect to the construction of house under Tsunami Scheme. Further, he would submit that the petitioner and his father had purchased property measuring to an extent of 1.265 acres in one block, in which the respondent, encroached the property measuring an extent of 0.03 cents and attempted to construct a house, in the encroached area.

7. Despite ordering notice to the 4th respondent and after receiving the notice, he has not turned up before this Court. The learned counsel for the respondents 1 to 3 alone present, infact they are formal parties to this Civil Revision petition. Further, no relief has been sought for

by the petitioner as against these respondents. However, this Civil Revision Petition is taken up for disposal on merits.

8. On going through the plaint averments, the petitioner has specifically stated in old SF No.38/5 in Thiagavalli Village, Cuddalore Taluk, the father of the plaintiff purchased 45 cents under a registered sale deed dated 10.11.1959. Subsequently, the petitioner/plaintiff has purchased 0.81 $\frac{1}{2}$ cents vide sale deed dated 30.03.1972. Thus, the plaintiff owns 1.265 cents in one block. At present, the said land can be used as house sites. Further, it is revealed that the 4th respondent owns 0.03 cents abutting plaintiff's 0.45 cents and another 0.63 $\frac{1}{2}$ cents further east. According to the petitioner, the 4th defendant is not a resident of Thiagavalli Village and he is the resident of Chennai. The 4th defendant has constructed two houses in 0.03 cents and he did not suffer very much during tsunami. By committing fraud and abuse, he got two ration cards and got sanction to construct two houses under Tsunami Scheme.

9. In response to the plaint averments, the 4th respondent herein/defendant has filed a written statement before the trial Court, in which he has admitted the title of the plaintiff. He has specifically stated that his construction is well within the description of his property and not encroaching upon the property of the plaintiff. Further, he has stated that the value of the said property is incorrect and wrong.

10. The averments set out both in the plaint and in the written statement reveal the fact that for disposing the Suit, identification of property is very much necessary. In the written statement filed by the 3rd defendant adopted by the 2nd defendant, it is specifically stated that part of the construction has already been completed. Whereas, the learned counsel appearing for the plaintiff would contend that the construction has not been completed. Hence, appointing the Advocate Commissioner for measuring the property is the only source to solve the dispute between the plaintiff and the defendant.

11. It is pertinent to note that the petitioner herein has filed an application in IA No.1234 of 2011, seeking the relief to appoint an Advocate Commissioner. The learned District Munsif has dismissed the said application by stating a reason that it has been filed only for the purpose of collecting the evidence, as stated supra. Further, it is to be noted that both properties are situated one by one and measuring the same and fixing the boundaries can not be said to be as collecting the evidence. Hence, I am of the opinion that the decision rendered by the trial Court requires interference by this Court.

12. In view of the above discussion, the order of the trial Court in IA No.1234 of 2011 is hereby set aside and this Civil Revision Petition is allowed. No costs. The learned Additional District Munsif,

Cuddalore is directed to appoint an Advocate Commissioner with a direction to measure the property along with Surveyor. Consequently, the connected Miscellaneous Petition is closed.

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09.09.2019

To

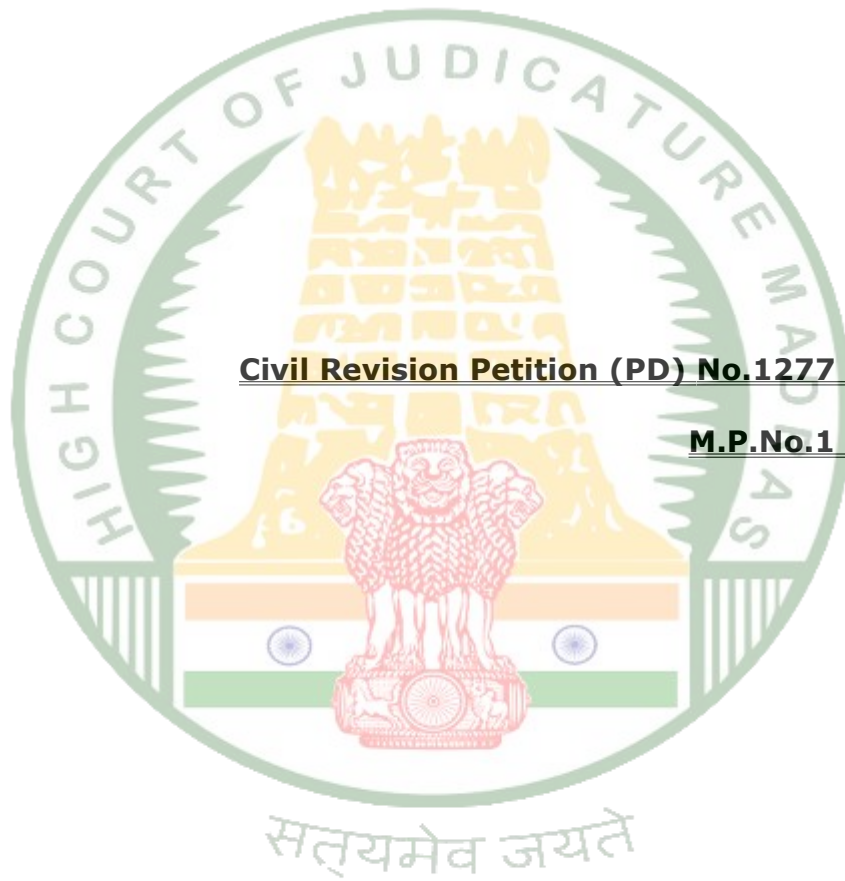
The Additional District Munsif Court, Cuddalore



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R.PONGIAPPAN, J.,

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