

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

C O R A M

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

C.R.P.(PD) No.3818 of 2014 &
M.P.No.1 of 2014

1.M.Surian @ Perumal
2.M.Manickam
3.Sett @ M.Marimuthu
4.M.Natarajan
5.M.Chandran

... Petitioners

Vs.

1.Palanisamy
2.P.Chinnaraju

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.08.2014 in I.A.No.563 of 2012 in O.S.No.403 of 2012 on the file of the Principal District Munsif, Salem.

For Petitioners ...

Mr.K.Selvaraj

For Respondents ...

No appearance

ORDER

The instant civil revision petition has been filed under Article 227 of the Constitution of India challenging the order dated 18.08.2014 passed by the learned Principal District Munsif, Salem in I.A.No.563 of 2012 in O.S.No.403 of 2012.

Brief facts leading to the filing of the instant revision:

2. The petitioners are the plaintiffs in the suit O.S.No.403 of 2012 pending on the file of the learned Principal District Munsif, Salem. The respondents are the defendants in the said suit. The suit O.S.No.403 of 2012 was filed by the petitioners seeking for declaration, permanent injunction and for mandatory injunction. The mandatory injunction relief was sought for by the petitioners to remove the encroachment allegedly made by the respondents in the suit schedule property. Along with the suit O.S.No.403 of 2012, I.A.No.563 of 2012 was filed by the petitioners seeking for an appointment of an Advocate Commissioner to note down the physical features as well as the alleged encroachment in the suit schedule property.

3. As seen from the affidavit filed in support of I.A.No.563 of 2012, according to the petitioners, the suit property originally belonged to their father Muthusamy by virtue of a registered sale deed dated 17.05.1965. According to them, from the date of purchase of the property, they are in possession and enjoyment of the suit schedule property measuring an extent of 0.76 cents. According to them, their father died leaving behind his wife Pachayammal, his sons who are the petitioners herein and two daughters viz., Thangam and Chinna ponnu as legal heirs to succeed his estate. It is the case of the petitioners that their mother and their sisters have relinquished their rights over the suit schedule property by way of oral release in favour of the petitioners. It has also been stated by the petitioners that due to poverty and in need of urgent family expenses, the petitioners have sold 0.65½ half cents out of the total extent of 0.76 cents and the remaining property measures 0.10½ cents which is the suit schedule property belongs to them absolutely. Further, the petitioners have stated that the respondents are the adjacent land owners and the second respondent is the land surveyor. According to them, the respondents with an intention to grab

the suit schedule property has created a patta and revenue records and illegally encroached upon the suit schedule property. It is the categorical stand of the petitioners that the respondents have no title or interest over the suit schedule property.

4. A counter affidavit was also filed by the respondents in I.A.No.563 of 2012 denying the allegations made by the petitioners in I.A.No.563 of 2012. But in their counter affidavit, excepting for stating that the petitioners are not in possession and enjoyment of the suit schedule property, they have not traced their title as to how they came in possession of the suit schedule property. However, they have denied that they are the neighbours of the petitioners and they have also denied the creation of patta and other revenue records as alleged by the petitioners in the affidavit filed in support of I.A.No.563 of 2012.

5. By order dated 18.08.2014, the Trial Court has dismissed I.A.No.563 of 2012 seeking for appointment of an Advocate Commissioner on the ground that the description of the property as given by the petitioners is not correct and moreover, the petitioners have not

specifically stated as to which portion the encroachment was made by the respondents/defendants. Aggrieved by the dismissal of I.A.No.563 of 2012, the instant Civil Revision Petition has been filed under Article 227 of the Constitution of India.

6. Heard Mr.K.Selvaraj, learned counsel for the petitioners. Despite service of notice on the respondents and their names having been printed in the causelist today, no one has entered appearance before this Court on their behalf.

Discussion:

7. Admittedly, the suit was filed by the petitioners for declaration, permanent injunction and for mandatory injunction. As seen from the averments contained in the plaint and also as per the averments contained in the affidavit filed in support of I.A.No.563 of 2012, the petitioners have taken a categorical stand that they are the absolute owners of the suit schedule property, having got the same, after the death of their father and after the relinquishment of rights in the suit schedule property by their sisters. Their father purchased the suit schedule property by virtue of a registered sale deed dated 17.05.1965.

They have also taken a categorical stand in the plaint that the respondents are the encroachers who have encroached upon the suit schedule property and illegally put up certain constructions over the same. Admittedly, along with the suit O.S.No.403 of 2012, I.A.No.563 of 2012 was also filed by the petitioners seeking for appointment of an Advocate Commissioner to note down the physical features as well as to note down the encroachments made in the suit schedule property.

8. Considering the nature of the reliefs sought for in the plaint and also considering the fact that the petitioners traces their title to the suit schedule property through a registered sale deed executed in the name of their father in the year 1965 who subsequently died and subsequent to his death, the petitioners who are his sons become the absolute owners of the suit schedule property, after the petitioners' sisters relinquished their shares in the suit schedule property, the Trial Court ought to have considered these factors while considering I.A.No.563 of 2012. Further as seen from the counter affidavit filed by the respondents in I.A.No.563 of 2012, they have not stated as to how they are in possession of the suit schedule property and as to how they claim interest over the same.

9. Being a suit for declaration, permanent injunction and for mandatory injunction to remove the alleged encroachments made by the respondents, if an Advocate Commissioner is appointed for the purpose, for which, it has been sought for in I.A.No.563 of 2012 and a report is submitted by the said Advocate Commissioner, it will assist the Court in the effective adjudication of the dispute between the parties, as it is the case of the petitioners that the respondents have encroached upon the suit schedule property by putting up illegal construction over the same. However, the Trial Court has dismissed the application filed by the petitioners only on the ground that the description of the property given by the petitioners is not correct and moreover, the petitioners has not specifically stated that as to which portion the respondents have encroached. The Trial Court has also erroneously observed that the Advocate Commissioner if appointed will only be a futile exercise and no useful purpose will be served.

10. For the foregoing reasons, in the considered view of this Court and also considering the fact that the reliefs sought for by the petitioners includes the relief of mandatory injunction to direct the

respondents/defendants to remove the alleged encroachment, the reliefs sought for by the petitioners in I.A.No.563 of 2012 ought to have been allowed by the Trial Court.

Conclusion:

11. For the foregoing reasons, there is merit in this revision and accordingly, the impugned order dated 18.08.2014 passed by the learned Principal District Munsif, Salem in I.A.No.563 of 2012 is hereby set aside and the instant civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

12. The petitioners are permitted to file a memo before the Trial Court enclosing a copy of this order within one week from the date of receipt of a copy of this Order and the Trial Court shall appoint an Advocate Commissioner within a period of two weeks from the date of filing of the memo by the petitioner.

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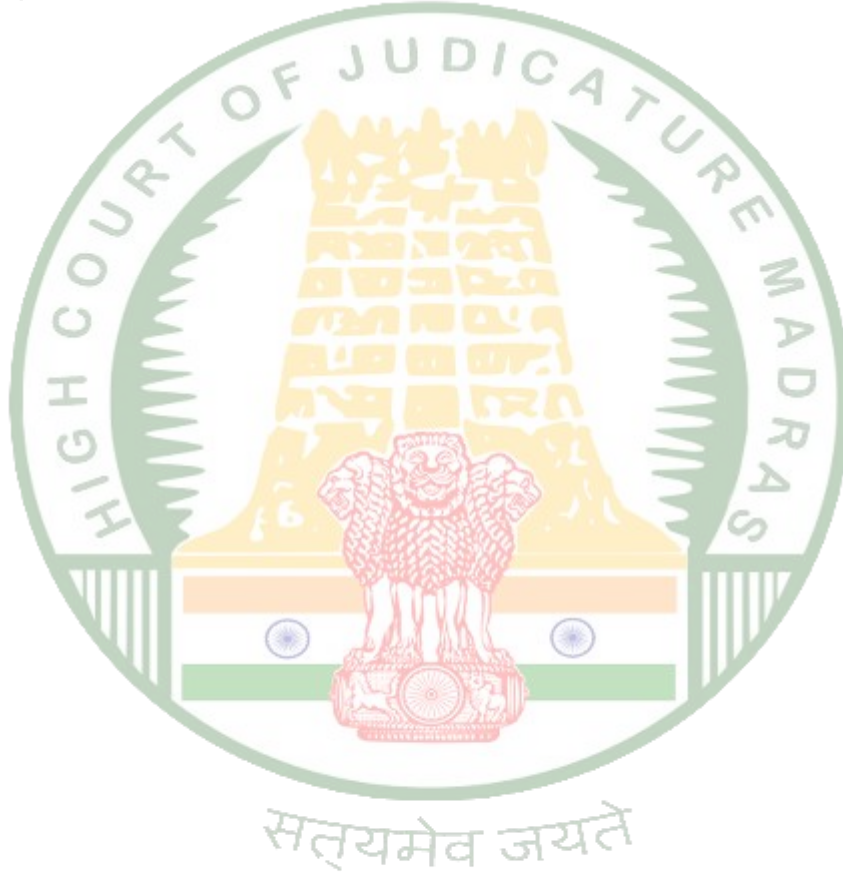
Index : Yes / No

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Speaking/Non-Speaking orders

To

The Principal District Munsif, Salem.



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ABDUL QUDDHOSE. J,

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