

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.PONGIAPPAN

Civil Revision Petition (PD) No.4823 of 2014
and
M.P.No.1 of 2014

Podhuudai Pillai

Petitioner

Vs

Subramanian

Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.09.2014 passed in I.A.No.32 of 2014 in O.S.No.275 of 2008, on the file of District Munsif Cum Magistrate, Vedaranyam.

For Petitioner : Mr.S.Sadasivan

For Respondent : Mr.R.Murugabharathi

ORDER

The defendant in OS.No.275 of 2008 on the file of District Munsif cum Judicial Magistrate, Vedaranyam is the petitioner herein. Before the trial Court, the respondent in this Civil Revision Petition as a plaintiff has filed the above referred suit as against the petitioner herein, seeking the relief of recovery of possession.

2. At the time of filing the suit, the learned District Munsif cum Judicial Magistrate, Vedaranyam, based on the request made by the respondent/plaintiff has appointed an Advocate Commissioner and directed him to note down the physical features and measure the property with the help of surveyor. In obeying the order passed by the Court below, the Advocate Commissioner had visited the property and at that time, the petitioner herein has requested the Advocate Commissioner to measure his property also to find out, whether any encroachment is made or not. The said request made by the petitioner was refused by the Advocate Commissioner. However, he has filed a report along with sketch given by the surveyor. In the said report, he has specifically noted the alleged encroachment made by the petitioner. In this aspect, after receiving the copy of the Advocate Commissioner's report, the petitioner has filed his objection. Thereafter, the petitioner has filed an application in IA.No.469 of 2010 to appoint a new Advocate Commissioner, for measuring the suit property and also the property owned by the petitioner. Since the same was dismissed, the petitioner has preferred the Civil Revision Petition before this Court in CRP No.4337 of 2012. Subsequently, by an order dated 18.12.2012, the said revision was withdrawn by the petitioner with liberty to file a fresh application before the Court concerned. Based on the liberty given to the petitioner, he has filed another application in IA No.32 of 2014 and in the said application, he has prayed the District Munsif cum Judicial Magistrate, Vedaranyam to

appoint a new Advocate Commissioner, after eliminating the report filed by the Advocate Commissioner who was appointed earlier. The learned District Munsif cum Judicial Magistrate, Vedaranyam by an order dated 24.09.2014, had dismissed the said application, observing that the petitioner is attempted to collect the evidence for the suit instituted by the respondent.

3. Aggrieved over the said findings, the petitioner is before this Court with the present Civil Revision Petition.

4. Today when the petition is came up for hearing, the learned counsel appearing for the petitioner present and made a submission that measuring the petitioner's property alone is the solution to find out whether the petitioner has encroached the property belongs to the plaintiff or not. In this aspect, he has conceded to appoint the same Advocate Commissioner to revisit the property for the purpose of measuring the property owned by the petitioner as well as by the respondent along with the help of surveyor. Further, he has given undertaking to bear the expenses in this regard.

5. Per contra, the learned counsel appearing for the respondent would contend that the petitioner by way of filing this type of applications has attempted to collect the evidence. He has further added

that the Court below has correctly appreciated the facts and issues and dismissed the application filed by the petitioner and therefore there is no need to interfere with the impugned order passed by the Court below.

6. Submissions made by either side are considered.

7. It is not in dispute that the only issue to be decided before the trial Court is whether the petitioner encroached the property belongs to the respondent or not. Further, in respect to the ownership of the property owned by the petitioner and the respondent, there was no dispute. Hence, measuring the property owned by the petitioner and the respondent is nothing but, a correct solution. Whether the defendant possessed the property more than the property he is having the right has also to be verified. If it is so, it is easy for the trial court to identify whether the petitioner encroached the plaintiff's property or not, by way of appointing the Advocate Commissioner.

8. It is also admitted at the time when the Commissioner inspected the Suit property, the petitioner herein has filed a memo and requested the Advocate Commissioner to measure his property also and the same was refused by him. As the Advocate Commissioner refused the request of the petitioner to measure the property, by comparing with the document along with the document produced by the respondents, it is

necessary on the side of the petitioner to file this application before the trial Court. That apart, the suit is based on the alleged encroachment made by the petitioner, it is necessary to measure the properties owned by the petitioner and the respondent, as already discussed. Appointing Advocate Commissioner for identifying the property more particularly directing the Advocate Commissioner, who was already appointed, to revisit the property is not against the principles of law.

9. Therefore, considering the issues raised in the suit and also considering the fact that the ownership of the property is not in dispute on either side, I am of the opinion that it is appropriate to give direction to the Advocate Commissioner, who was appointed already, now to revisit the suit property for the purpose of measuring the properties owned by the respective parties.

10. In view of the above, the petition filed by the petitioner is allowed. Further, considering the fact that the suit is pending from the year 2008, it is appropriate to give direction to the learned District Munsif cum Judicial Magistrate, Vedaranyam to dispose of the suit in a stipulated period. Further, the learned District Munsif cum Judicial Magistrate, Vedaranyam is directed to direct the Advocate Commissioner to revisit the suit property along with surveyor and direct to submit his report within a period of two months and thereafter he is directed to dispose of the suit

within a period of 3 months from the date of receiving the report filed by the Advocate Commissioner. The Civil Revision Petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

vrn

27.09.2019

To

The District Munsif Cum Magistrate, Vedaranyam



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R.PONGIAPPAN, J.,

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