

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P(PD).Nos.1849 & 1876 of 2017
&
C.M.P.Nos.8871 & 9005 of 2018

Ragu

...Petitioner

Vs

1.A.Saraswathi

2.A.Swarna

... Respondents

Prayer in C.R.P.No.1849 of 2017: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 02.03.2016 passed in I.A.No.14229 of 2016 in O.S.No.3350 of 2007 on the file of the XIV Assistant, City Civil Court, Chennai.

Prayer in C.R.P.No.1876 of 2017: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the order dated 02.03.2016 passed in I.A.No.15029 of 2016 in O.S.No.3350 of 2007 on the file of the XIV Assistant, City Civil Court, Chennai.

For Petitioner : M/s.S.P.Arthi
For Respondents : Mr.E.Agilan
M/s.P.Wilson Associates

COMMON ORDER

The above Civil Revision Petitions C.R.P.No.1849 of 2017 and C.R.P.No.1876 of 2016 are filed by the defendant in the suit challenging the order passed in I.A.No.14229 of 2016 and I.A.No.15099 of 2016 respectively in O.S.No.3350 of 2007, in and by which the learned XIV Assistant City Civil Judge, Chennai has allowed said applications. The facts in brief are as follows:

2.The respondents/plaintiffs have filed a suit O.S.No.3550 of 2007 on the file of the VI Assistant City Civil Judge, Chennai for a declaration that the plaintiffs are the owners of the suit schedule property mentioned as B, C, G and F forming part of suit schedule-A property which is more fully described in schedule-B and for a mandatory injunction directing the

defendant to deliver the vacant possession of the property marked as B, C, G and F in the schedule B and also for a direction to the defendant to pay the damages at a sum of Rs.10,000/- per month. The controversy is with reference to an extent of 1920 Sq.ft. which form a part of the A schedule property.

3.The larger extent of the suit property belonged to one Muthukrishnan, who had in turn purchased the property from one Varadachari. It is the case of the plaintiffs that the said Muthukrishnan had formed a layout in Bhuvaneshwari Nagar and they had purchased an extent of 7,200 Sq.ft. situate in Plot No.193 and 194, Bhuvaneshwari Nagar, Velacherry, Chennai – 600 042, comprised in Survey No.317/1, under a sale deed dated 14.07.2006 from one Shree Naduri Atchutha Ramaiah acting through his power agent. It is their case that on the purchase they are in possession and enjoyment of the same. They would further contend that the defendant who had no right in the

property had encroached into the plaintiffs property measuring an extent of 1920 Sq.ft. and had filed a suit in O.S.No.6396 of 2016 for bare injunction.

4.The plaintiff would submit that the defendant after encroaching the property had put up an unauthorised construction and compound wall. The complaint to the Police got no response therefore the plaintiffs were constrained to file the suit for the reliefs stated supra.

5.The defendant has filed a detailed written statement tracing the title of the property to the larger extent of 21 acres and how the large extent had changed hands. He would contend that he had purchased plot No.74 from the original owner A.S.V.Varadhachari, who had plotted out an extent of 11 acres and 77 cents which he had retained after the sale of 3 acres to one Muthukrishnan. The defendant would submit that when he is away for treatment on account of his ill health at vellore, the

plaintiffs taking advantage of their absence tried to grab the property and when he had visited the property on July 2006, he came to know about the same and the 1st plaintiff had attempted to demolish the compound wall which was successfully prevented by the defendant. Since the plaintiffs were attempting to grab the property the defendant had filed a suit O.S.No.6396 of 2006 on the file of the XIV Assistant City Civil Court, Chennai.

6.The defendant would contend that from the date of the purchase he has been exclusive possession and enjoyment of the property purchased by him which is Plot No.74 measuring an extent of 2,400 Sq.ft. in survey No.317/1. The defendant would further contend that it is totally inconceivable as to how the vendor of the plaintiffs who had just purchased an extent of 3 acres could have sold 248 plots and each measuring an extent of 1.5 ground.

7.The defendant would contend that the suit is only a

counter blast to the suit filed by the defendant for an injunction. After the conclusion of the evidence of P.W.1, the plaintiffs have come forward with two applications:

i) I.A.No.14299 of 2016 to appoint an Advocate Commissioner for the following relief:

"to appoint an Advocate Commissioner along with a Government Surveyor for the purpose of (a) locating, measuring and identifying the properties of the petitioners/plaintiffs herein in respect of the vacant land situate in 137, Velachery Village, Mambalam Guindy Taluk, Chennai District, comprised in Survey No.317/1, Bhuvaneswari Nagar, vide Layout Approval No.D.T.P.No.26/65, C.No.40104/C3-64, dated 30.01.1965, bearing Plot Nos.193 and 194, measuring an extent of 7,200 Sq.ft. as per Layout Plan and bounded on the North by: Plot Nos.175 and 176, South by: 30 Feet Road, East by: Plot No.195 and West by: Plot No.192, measuring:

North to South on the Eastern side – 80 feet,

North to South on the Western side – 80 feet,

East to West on the Northern side – 90 feet and

East to West on the Southern side – 90 feet and

in all measuring to an extent of 7,200 Sq.ft., within the Registration District of South Chennai and Sub-District of Velachery, which are in the Petitioners' occupation covered under Schedule-B of the Sale Deed in Document No.3367 of 2006 dated 14.07.2006, more fully described in Schedule-A in O.S.No.3350 of 2007, pending on the file of this Hon'ble Court and (b) also to locate, measure and identify the property of the Respondent herein whether it is situated within the properties of the Petitioners/Plaintiffs herein or elsewhere in Plot No.74, in the approved layout LPDM/DTP No.16/1973, comprised in S.No.317/1 Part of Velachery Village, measuring North to South on the Eastern side – 60 Feet, on the Western side – 60 Feet, East to West on the Northern Side 40 Feet – on the Southern side – 40 Feet admeasuring an extent of 2400 Sq.Ft. or thereabouts and bounded on the North by Plot No.83, East by Plot No.73, West by Plot No.75 and South by 30 Feet Road and situated within the Registration District of South Madras and Sub-Registration District of Saidapet, as per the Sale Deed of the Respondent herein in Document No.1674 of 1982 dated 28.04.1982, morefully described in the Suit schedule

property in O.S.No.6396 of 2006, pending on the file of this Hon'ble Court and submit a report along with sketch, measurement and photos of the said properties.

ii) I.A.No.15099 of 2016 for amending the plaint by inserting paragraph No.10 to the plaint which would read as follows:

"The plaintiffs submit that they are the absolute owners of the immovable residential properties situate in 137, Velachery Village, Mambalam Guindy Taluk, Chennai District, comprised in Survey No.317/1, Bhuvaneswari Nagar, vide Layout Approval No.D.T.P.No.26/65, C.No.40104/C3-64, dated 30.01.1965, bearing Plot Nos.193 and 194, measuring an extent of 7,200 Sq.Ft. and bounded on the North by: Plot Nos. 175 and 176, South by: 30 Feet Road, East by: Plot No.195 and West by: Plot No.192, measuring 80' X 90' and in all measuring 7,200 Sq.Ft. The suit schedule properties are situated at the 3rd Main Road of Bhuvaneswari Nagar. The adjacent immovable properties facing the 3rd Main Road and the 2nd Main Road of Bhuvaneswari Nagar, bear 3 digit Plot Numbers. For instance, Plot Nos.174, 175 and 176 are situated on the Northern side of the Plaintiffs'

properties facing the 2nd Main Road of Bhuaneswari Nagar. Plot No.192 is situated on the Western side of the Plaintiffs' properties which also bears a 3 digit Number wherein full-fledged residential buildings have been constructed and occupied. In the same way, Plot No.195 is situated on the Eastern side of the Plaintiffs' properties which also bears a 3 digit Number wherein also full-fledged residential buildings have been constructed and occupied. The entire area of Bhuvanewari Nagar is developed with full of buildings which pertain to DTP.No.26/65 Layout. Thus, it is crystal clear that the plaintiffs' properties bearing Nos.193 and 194 are surrounded not only by 3 digit Number plots but also of full-fledged buildings. It is submitted that it may be seen from the plaint filed by the Defendant herein in O.S.No.6396 of 2006 and the written statement filed by him in O.S.No.3350 of 2007 that he claims his ownership to Plot No.74 which is a two digit number pertaining to DTP No.16/73 and situated at VGP Selva Nagar on the Northern side of Bhuvanewari Nagar. The fact that DTP No.16/73 pertains to VGP Selva Nagar has been decided in W.P.No.14189 of 2004 by the Division Bench of the Hon'ble High Court of Madras by order dated

14.03.2007 which has reached its finality. There is no ambiguity with regard to the location of layout in DTP No.16/73 at VGP Selva Nagar in view of the above ruling of the Division Bench of the Hon'ble High Court of Madras. The defendant herein has no locus standi to file the suit in O.S.No.6396/2006 and therefore the plaint filed by the defendant in O.S.No.6396/2006 is liable to be dismissed in limine on this ground alone. The Division Bench of the Hon'ble High Court of Madras came to the conclusion that the layout in DTP No.16/73 pertains to VGP Selva Nagar only after taking into consideration the authenticated xerox copy of the approved layout pertaining to DTP No.16/73 produced by the Corporation Authorities. This approved layout was formed by VG Panneerdas and Company in the name of VGP Selva Nagar in the year 1968. Earlier, layout in DTP.32/68 was formed by VG Paneerdas and Company and christened the Nagar as V.G.P.Selva Nagar. Subsequently, in the year 1973, the same layout was revised as DTP No.16/1973. Thus, it is crystal clear that layout No.32/68 and the revised layout No.16/73 are one and the same. It is the specific case of the Defendant herein that his suit property is situated in layout No.16/73. There is no

ambiguity that layout No.16/73 is an approved layout. The Defendant herein claims that his property pertains to layout No.16/73. Therefore, by no stretch of imagination, the Defendant herein can claim that his property is situated in Bhuvaneswari Nagar which is in layout No.26/65. Therefore, it is illogical for the Defendant herein to claim that his suit property pertaining to DTP No.16/73 is situated in Bhuvaneswari Nagar, when in actuality, DTP No.16/73 is located in VGP Selva Nagar and in this regard, the Division Bench of the Hon'ble High Court of Madras has already held so on the basis of the authenticated xerox copy of the approved layout pertaining to DTP No.16/73 produced by the Corporation Authorities”.

8. Both the applications were tooth and nail opposed by the defendant, particularly the amendment application in which the defendant would contend that it is an oblique attempt to introduce a totally new case. As regards the Advocate Commissioner, in the counter filed in support of the petition seeking an appointment of the Advocate Commissioner, the defendant had submitted that since the controversy is with

reference to the entire extent of 3 acres which is purchased by Muthukrishnan, the Advocate commissioner should identify the property that was purchased by Muthukrishnan since the plaintiffs claim their title through him.

9.The learned XIV Assistant City Civil Judge, Chennai passed an order dated 02.03.2017 allowing the amendment petition on the ground that no new case have have been invented and that the property belonging to the defendant is situate in V.G.P Selva Nagar. As regards the application for the appointment of the Advocate Commissioner, the learned Judge had allowed the same as prayed for on the ground that the respondent has not let in any prima facie evidence to show that Muthukrishnan could not form 248 plots since he had purchased only 3 acres.

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10.Challenging the said orders the revision petitioner is

before this Court. As regards the appointment of the Advocate Commissioner the revision petitioner would submit that the scope of the warrant should be expanded to include inspection of the entire extent of 3 acres which is purchased by Muthukrishnan in keeping with the revenue records/title deed, sale deed etc. So that the property over which the plaintiff is seeking a declaration could be easily identified. The order in I.A.No.14299 of 2016 is therefore modified to the extent now sought for. The counsel for the respondent has no objection to the same. The order is modified in addition to the work entrusted under the earlier warrant an additional work is also entrusted to the said Advocate Commissioner, in that, he shall identify the property purchased by Muthukrishnan as per the sale deed bearing Document No.318/66 along with the revenue records and submit his report. The C.R.P.No.1849 of 2017 is therefore partly allowed with above modification.

11.Considering C.R.P.No.1876 of 2007, it is very clear that

this is a post trial amendment and the affidavit which is filed in support of the amendment application is totally bereft of any details as to when the information contained in the additional pleadings has come to the knowledge of the respondent/plaintiff. Infact, in the affidavit the plaintiffs would contend that these statements had been stated by the revision petitioner herein in his written statement. It is seen that the written statement was filed on 05.11.2007, therefore there is no reason given in the affidavit as to why the plaintiffs have waited till the year 2016 to take out the said amendment application. Further the amendment application does not deal with any issue relating to the petitioner's property but only deals with the defendant's property. It is needless to state that the plaintiffs have to establish their title to the property on the strength of their case and not by relying upon the weakness of the defense.

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Considering the fact that the amendment is a post trial

amendment, the amendment passed in I.A.No.15099 of 2016 is set aside and the C.R.P.No.1876 of 2017 is allowed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are also closed.

In fine, C.R.P.No.1849 of 2017 is allowed in part and C.R.P.No.1876 of 2017 stands allowed.

28.02.2019

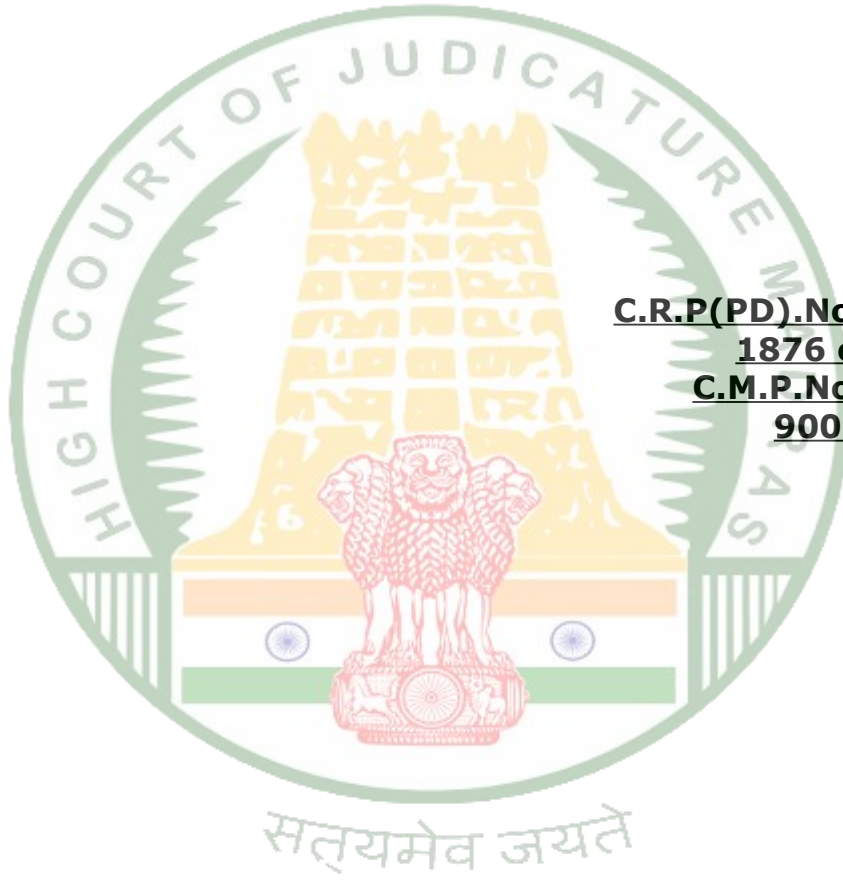
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Index : Yes/No
Speaking order/non-speaking order

To,
The XIV Assistant, City Civil Court,
Chennai.

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P.T.ASHA, J.,

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