



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2019

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P(PD) (MD)Nos.1624 and 1625 of 2012
and

M.P. (MD)No.1 of 2012 and C.M.P(MD)No.6105 of 2019

1.M.Mohan
2.M.Murugan
3.K.Sekar

: Petitioners/Petitioners/Plaintiffs
in both cases

.. Vs ..

1.Pitchaimani
2.Muthurakku

: Respondents/Respondents/Defendants
in both cases

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order in I.A.Nos.80 and 79 of 2012 in O.S.No.246 of 2009 on the file of the Additional District Munsif cum Judicial Magistrate Court, Manamadurai, dated 26.06.2012 and allow these Civil Revision Petitions.

For Petitioners : Mr.D.Senthil
For Respondents
in both C.M.Ps : Mr.S.Srinivasa Raghavan
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ORDER

These two Civil Revision Petitions are directed against the order passed by the learned Additional District Munsif-cum-Judicial Magistrate, Manamadurai in I.A.Nos.80 and 79 of 2012 in O.S.No.246 of 2009.

2.The revision petitioners are plaintiffs in O.S.No.246 of 2009. The suit was filed for declaration of title and consequential permanent injunction restraining the defendants from



interfering with the peaceful possession and enjoyment of the plaintiffs. It is the case of the plaintiffs that the first plaintiff purchased an extent of 34 cents out of total extent of 57 cents in Survey No.108/5 in Malavarayanenthal Village in Manamadurai Taluk, Sivagangai District. It is the further case of the first plaintiff that out of 34 cents purchased by the first plaintiff, an extent of 10 cents in the middle portion was sold in favour of the second plaintiff by a document dated 11.07.2008 and that another 15 cents was sold in favour of third plaintiff by another document dated 11.06.2008. It is the specific case of the plaintiffs that after the sale, sub division was effected in favour of all the three plaintiffs as per the documents and the suit property is an extent of 4 cents which is left as a channel on the eastern side of the property. It is also stated that the suit property measuring an extent of 4 cents have been sub-divided as Survey No.108/5E. The first defendant is the adjacent land owner. It is even admitted that the defendant is the owner of Survey No.108/5D. The second defendant is the wife of the first defendant. Stating that the channel that lies in Survey No.108/5E (suit property) is the property belongs to the first plaintiff and that the same is used by the plaintiffs for the purpose of drawing water for their agricultural fields the suit came to be filed. The plaintiffs have asserted their rights in respect of the suit property which is a portion of Survey No.108/5 measuring an extent of four cents. It is the case of the plaintiffs that the defendants made an attempt to obliterate the channel that was found in the suit property and that therefore they are entitled to the relief prayed for.

3.The respondents in these Civil Revision Petitions filed a written statement denying the existence of Survey No.108/5E. It is the specific case of the defendants that the first defendant purchased an extent of 13 cents on the southern side out of an extent of 57 cents in Survey No.108/5. It is also the case of the defendants that no channel was in existence on the eastern side as it was claimed by the plaintiffs. Since the document of sale executed by the first plaintiff in favour of the defendants 2 and 3, do not refer to the existence of any channel, it is also contended by the first defendant that the plaintiffs have obtained patta after getting subdivision from the revenue authority without notice to the first defendant surreptitiously. It is also stated by the first defendant that the sub division proceedings were cancelled at the instance of the first defendant and the revenue records were restored subsequent to the order passed by the Revenue Divisional Officer. In the said circumstances, the first defendant prayed for dismissal of the suit.



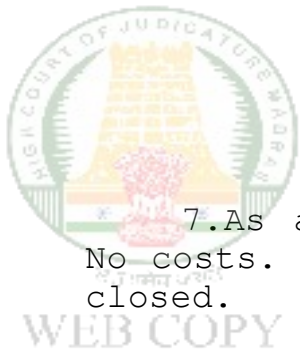
4.The suit was taken up for trial and after closing evidence on either side, the revision petitioners filed an application in I.A.No.79 of 2012 to reopen the case and another application in I.A.No.80 of 2012 for appointment of an Advocate Commissioner to inspect the suit property and to find out the physical features of the suit property and to prepare a plan. The application was contested by the defendants mainly on the ground that the application which is filed after closure of evidence of both sides is an abuse of process of law and that serious prejudice will be caused to the defendants if the case is reopened after evidence is closed. The lower Court dismissed both the applications mainly on the ground that the applications lack *bona fides* as it has been filed belatedly at the fag end of the trial. Aggrieved by the same, the plaintiffs have preferred C.R.P.(MD) No.1624 of 2012 as against an order in I.A.No.80 of 2012 and C.R.P.(MD)No.1625 of 2012 is directed against the order in I.A.No.79 of 2012.

5.The learned Counsel appearing for the revision petitioners pointed out that the respondents have specifically raised a point in their written statement to the effect that the suit without asking for appointment of Advocate Commissioner to prove the petitioners' case is not maintainable. In the said circumstances, it is submitted that the order of the lower Court dismissing the applications on the grounds that the applications filed belatedly are without *bona fides* and that the applications are to drag on the proceedings is not appropriate. The learned Counsel further pointed out that the dispute in this case is with regard to the existence of a channel as it is contended by the revision petitioners in the plaint and that therefore, the appointment of Advocate Commissioner is warranted for the purpose of effective adjudication and disposal of the suit. Though the application for appointment of an Advocate Commissioner is filed after closure of evidence, having regard to the circumstances of the case, the learned Counsel submitted that the order dismissing the application is not sustainable. The learned Counsel appearing for the respondents, however, submitted that the revision petitioners have obtained a sale deed in respect of 34 cents out of a larger extent of 57 cents adjacent to the property of the first defendant and that the sub divisions were effected without notice to the defendants either before or after the sale deeds in favour of the plaintiffs. Though there is no serious dispute with regard to the total extent of land purchased by the revision petitioners, it is contended by the respondents that the sub division of the portion of land as Survey No.108/5E is fraudulent and that the petitioners' applications to inspect the property that has been subdivided as Survey No.108/5E will cause serious prejudice to the



case of the defendants. It is further submitted that the subdivision that had taken place pursuant to the sale deed obtained by the plaintiffs had been cancelled by order of Revenue Divisional Officer and that therefore, the suit itself is not maintainable with reference to the subdivision as per the revenue proceedings in view of the restoration of *status quo ante* by the Revenue Divisional Officer.

6.The suit is for declaration of title of plaintiffs and their predecessors. The apprehension of the defendants in this case appears to be that the plaintiffs on the basis of subdivision proceedings are trying to claim title with reference to a particular piece of land on ground. It is, therefore, the cancellation of sub division at the instance of first defendant is relevant. The plaintiffs in order to succeed in the suit has to prove their title with reference to four boundaries in the larger extent. Without that being done, any claim of title in a particular Survey Number, with reference to a specific portion of the land in a particular survey number on the basis of any subdivision proceedings may not be appropriate. As pointed out by the learned Counsel appearing for the respondents, the sale deed obtained by the revision petitioners do not disclose any channel. It is the case of the plaintiffs that the channel was found in Survey No.108/5E as per subdivision which was done after the sale deeds. It is well settled that an Advocate Commissioner can be appointed to obtain evidence and cannot be to fish out evidence. In such circumstances, this Court is able to appreciate the grievance of the respondents who are the defendants in the suit. Having regard to the foregoing reasons, this Court is of the view that the appointment of Advocate Commissioner to inspect the suit property as per the disputed subdivision will prejudice the rights of the parties. Unless the case of the plaintiffs as to the subdivision effected pursuant to the sale deeds in favour of the plaintiffs 1 to 3 is substantiated as valid and proved in the manner known to law, the Advocate Commissioner cannot be appointed. In effect, the revision petitioners seeks to get a report to reiterate their stand in the plaint relying upon the subdivision. In other wards, for the same reasons why the lower Court cannot entertain the application to find out possession of the property, the present application filed by the respondents for appointment of Advocate Commissioner cannot be entertained. The Advocate Commissioner cannot be appointed to find out the physical features for the purpose of ascertaining one's possession or enjoyment over the property in dispute. In the same way, the present application filed by the revision petitioners are not sustainable.



7.As a result, these Civil Revision Petitions are dismissed.
No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

The Additional District Munsif-cum-Judicial Magistrate,
Manamadurai.

+2 CC to Mr.D.SENTHIL, Advocate SR-76110 & 76111

+1 CC to Mr.S.SRINIVASA RAGHAVAN, Advocate SR-76130.

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