



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.08.2019

CORAM:

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THE HONOURABLE MR.JUSTICE S.S. SUNDAR

C.R.P.(PD)(MD).No.957 of 2011
and M.P.(MD).No.1 of 2011

1.G.Seenivasan
2.Krishnasamy (Died)
3.K.Piragalathan
4.Mallika

.. Petitioners

(Petitioners 3 & 4 were brought as legal heirs of the deceased 2nd petitioner by an order dated 21.09.2015 in M.P.(MD).No.6 of 2015 in C.R.P.(MD).No.957 of 2011)

Vs.

1.Ramasamy (Died)
2.Lakshmanan
3.Venkatraman
4.Duraiaraj
5.S.Boopathy
6.Ravindran(Died)
7.Tamilmani
8.Dhanalakshmi
9.Mohan Rengaraj
10.K.Pramila
11.R.Venkatesh
12.Dheenadayalan
13.R.Danalakshmi
14.R.Sasikumar
15.R.Sumathi

.. Respondents

(Respondents 8 to 12 were brought on record as legal heirs of the deceased first respondent by an order made in M.P.(MD).No.3 of 2015 in C.R.P.(MD).No.957 of 2011. Respondents 13 to 15 were brought on record as legal heirs of the deceased sixth respondent by order dated 21.09.2015 made in M.P.(MD).Nos.4 & 5 of 2015 in C.R.P.(MD).No.957 of 2011.)

Prayer: Civil Revision Petition filed under Section 227 of the Constitution of India against the order dated 25.03.2011 made in I.A.No.142 of 2011 in O.S.No.342 of 2004 on the file of the District Munsif Court, Sivakasi.



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For Petitioners

: Mr.J.Bharathi
for Mr.P.Athimoolapandian

For Respondents

: Mr.M.Ashokkumar
for R2 to R4, R13 & R15
R1 & R6 - Died
R5, R7 & R14 - No Appearance
R8 to R12 - Dismissed vide order dated
26.06.2019

ORDER

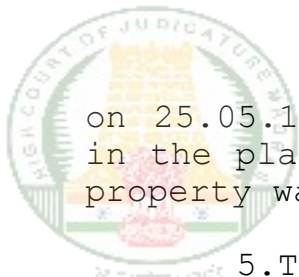
The learned counsel appearing for the petitioner filed a memo. The first respondent in this civil revision petition was set exparte before the lower Court and hence the petitioners give up as against the first respondent even at the time of filing this civil revision petition.

2.It is represented by the learned counsel for the petitioner that even before the lower Court, the interlocutory application was not pressed as against the first respondent herein, since the first respondent was impleaded only as a formal party. The petitioner has filed a memo stating that the legal representatives of the first petitioner are already on record and further to record that the petitioners give up respondents 8 to 12 in this civil revision petition. However, this Court has earlier observed that the civil revision petition is liable to be dismissed for non prosecution for non payment of Batta to respondents 8 to 12. In view of the position, explained in the memo, dated 19.08.2019, the civil revision petition is dismissed as against the respondents 1, 8 to 12.

3.This civil revision petition is filed by the plaintiffs in the suit in O.S.No.342 of 2004, as against the order passed in I.A.No.142 of 2011 in O.S.No.342 of 2004 on the file of District Munsif Court, Sivakasi, dismissing the petition for appointment of an Advocate Commissioner to note down the physical features of the scheduled property.

4.The brief facts that are necessary for the disposal of the civil revision petition are as follows:

The revision petitioners 1 and 2 filed a suit in O.S.No.342 of 2004 for declaration and consequential injunction in respect of the property that was described as per the plaint schedule. The suit property is measuring an extent of 11 cents comprised in two survey numbers in S.Nos.286/7 & 286/8 in Naranapuram Village. The revision petitioners claim title to the property through one Subramaniam Pillai and Avudaiyatchiammal. The revision petitioners 1 and 2 are the sons of one Gopalasamy @ Ponnaiah Naicker son of Krishnava Naicker who purchased the property



on 25.05.1950 from Subramaniam Pillai and Avudaiyatchiammal. Even in the plaint, it is contended by the revision petitioners that the property was not properly surveyed.

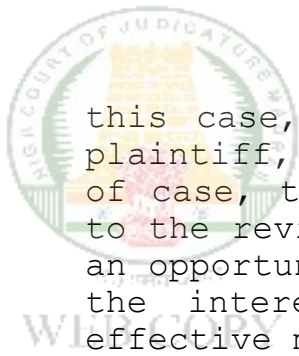
5.The lower Court however taking into account the plaint description of the property, dismissed the petition. After holding that the property cannot be identified from the description given by the revision petitioners in the plaint, the petition was dismissed. Aggrieved by the same, the above civil revision petition is preferred by the plaintiffs.

6.The learned counsel for the revision petitioners submitted that the court failed to understand the scope of dispute as per the pleadings. It is further contended by the learned counsel that the defendant has disputed the identity of the property itself and the commissioner's report would certainly help the Court, especially in this case where the re-survey has not been properly conducted as it was indicated in the plaint. Since the issue in relating to the identity of the suit property and the survey number, it is also submitted that it is absolutely necessary for the Court to get assistance from the Advocate Commissioner for an effective adjudication of the lis.

7.The learned counsel appearing for the respondents on the other hand submitted that the description of the property is not clear and therefore, the Commissioner report would only complicate the matter rather than helpful to the Court. The learned counsel further submitted that the petition filed by the revision petitioners had no bonafides as it was filed only in 2011.

8.This Court considered the rival submissions of respective counsels. The pleadings in the plaint and written statement are perused.

9.It is a fact that there is a dispute with regard to the identity of the suit property as admitted by both parties. The property has been described not only with reference to the survey number, but also with reference to the four boundaries. The commissioner may inspect the property and measure the property with reference to the boundaries shown in the suit schedule. In case of doubt, the revision petitioners may be given an opportunity to show the boundaries to the Advocate Commissioner. If it is done, there will not be any difficulty for the Advocate commissioner to identify the property on ground. To avoid possible confusion, memo of instructions can be given by both the revision petitioners and respondents. No doubt, it is true that the suit property has not been properly described and the property has been described with reference to two survey numbers without specifically stating the extent of land in each re-survey numbers. It is also true, that the commissioner can be appointed only to obtain evidence which is on land. However, a peculiar situation arose in



this case, where the identity has become little difficult for the plaintiff, in view of subsequent survey. Having regard to the nature of case, this Court is of the view that some lenience can be shown to the revision petitioners / plaintiffs, so that they will be given an opportunity to reduce the scope of litigation. This should be in the interest of justice and for resolving the dispute in an effective manner.

10. In that view, this Court is inclined to allow the revision petition and accordingly, this civil revision petition is allowed and the order dated 25.03.2011 passed in I.A.No.142 of 2011 in O.S.No.342 of 2004 by the learned District Munsif-cum-Judicial Magistrate, Sivakasi, is set aside. The application in I.A.No.142 of 2011 in O.S.No.342 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Sivakasi, stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

11. The Commissioner is directed to get guidance from both parties with regard to the identity of the property with reference to the description of the property found in the plaint. In case of any difficulty in fixing the boundary, the Commissioner may get memo of instructions from both sides and prepare the independent plan so that the Court may understand the nature of dispute between the parties more accurately.

12. This Court is able to see that the revision petition is pending for more than eight years and the suit itself was filed in the year 2004. Having regard to the circumstances, the learned District Munsif-cum-Judicial Magistrate, Sivakasi, is directed to dispose of the suit within a period of four months from the date of receipt of the commissioner's report.

Sd/-
Assistant Registrar (Crl. Side)

/TRUE COPY/

Sub Assistant Registrar

To

1. The District Munsif-Cum-Judicial Magistrate,
Sivakasi.

2. The Section Officer,
E.R/V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)



+1 CC to M/s.M.ASHOK KUMAR, Advocate (SR-82343[F] dated 20/08/2019)

+1 CC to M/s.P. ATHIMOOLA PANDIAN, Advocate (SR-82684[F] dated 21/08/2019)

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