



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

C.R.P. (MD) (PD)No.372 of 2012

and

M.P. (MD) No.1 of 2012

1.Velayutham
2.Rajammal
3.Rajkumar
4.Chitra
5.Murugeswari
6.Prema
7.Sita

:Petitioner/Petitioners/Defendants

vs.

1.Sandhiyagu

... Respondent 1/Respondent 1/Plaintiff 1

2.Janaki

3.Thamilarasan

4.Senthamizh Selvan

:Respondents 2 to 4/

Respondents 2 to 4/Plaintiffs 2 to 4

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order, dated 08.12.2011 made in I.A.No.620 of 2011 in O.S.No.1 of 2003 on the file of the Principal District Munsif Court, Manamadurai.

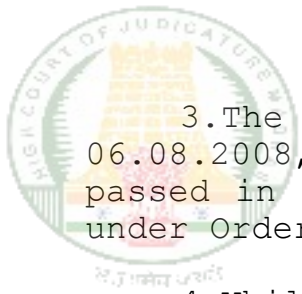
For Petitioners : Mr.S.Srinivasa Raghavan

For Respondents : Mr.K.P.Sankarakumara Kurubaran

ORDER

This petition has been filed challenging the order passed by the Court below refusing to entertain the application filed by the petitioners for surveying the property with the help of Inspector of Survey in line with the title documents.

2.The petitioners are the defendants before the Court below. The plaintiffs filed a suit seeking for the relief of declaration and permanent injunction. The suit was decreed by a judgment and decree, dated 20.04.2007. Aggrieved by the same, the petitioners filed an appeal before the District Court, Sivagangai, in A.S.No.14 of 2008.



3.The appellate Court, by judgment and decree, dated 06.08.2008, allowed the appeal and set aside the judgment and decree passed in the suit and remitted the matter back to the trial Court under Order XLI Rule 23A CPC.

4.While, the lower appellate Court remanded the suit back to the trial Court, a specific direction was given to the trial Court to re-issue the warrant to the Advocate Commissioner, who had already inspected the property, to measure the property with the help of Taluk Surveyor with reference to the title deeds relied upon by the parties and with reference to the revenue records.

5.After the matter was remanded, the trial Court, in compliance with the direction issued by the appellate Court, directed the Advocate Commissioner to measure the property with the help of the Taluk Surveyor.

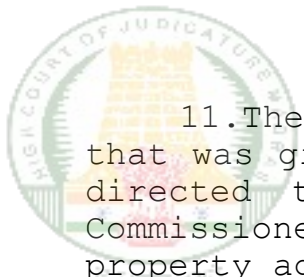
6.An application came to be filed by the petitioners by alleging that the Taluk Surveyor is biased and he is proceeding further to measure the property without reference to the title deeds. Therefore, the petitioners sought for the assistance of Inspector of Survey to assist the Advocate Commissioner in measuring the property.

7.The Court below dismissed the said application mainly on the ground that the Appellate Court had specifically directed that the measurement of property has to be done with the help of Taluk Surveyor and that the said direction cannot be disregarded.

8.The learned Counsel for the petitioners submitted that no prejudice will be caused to the plaintiffs, if the Advocate Commissioner is assisted by the Inspector of Survey, since the measurement of the property is going to be carried out only with reference to the title deeds, which are in possession of both parties. The learned Counsel further submitted that unless this Court directs the Inspector of Survey to assist the Advocate Commissioner, the trial Court will insist for the Taluk Surveyor to continue with the measurement of property and as a result of the same, the petitioners will be put to prejudice.

9.The learned Counsel for the respondents submitted that the petitioners are dragging on with the case and this is one more attempt made by the petitioners to keep the proceedings pending and the suit that was filed in the year 2003 is yet to see the light of the day. Therefore, the learned Counsel for the respondents requested this Court to dismiss the revision petition filed before this Court.

10.This Court carefully considered the submissions made on either side and the materials available on records.



11.The trial Court has strictly gone by the specific direction that was given by the appellate Court, wherein, the appellate Court directed the trial Court to re-issue warrant to the Advocate Commissioner, who had already inspected the property, to measure the property again with the help of Taluk Surveyor with reference to the title deeds and the revenue records. The petitioners have alleged bias on the part of the Taluk Surveyor and the further allegation that has been made is that the measurement is being made without reference to the title deeds.

12.Taking into consideration the facts and circumstances of the case, the trial Court is directed to verify, whether the concerned Taluk Surveyor is continuing to hold the Office. If the same Taluk Surveyor continues to hold the Office, the trial Court shall direct the Advocate Commissioner to take the assistance of the Inspector of Survey and proceed to measure the property with reference to the title deeds and revenue records. If in case, there is a change in the incumbent of the Office of the Taluk Surveyor, the new Taluk Surveyor can be directed to assist the Advocate Commissioner. It is made clear that the measurement shall be made only with reference to the title deeds and revenue records.

13.In the result, the order passed by the Court below in I.A.No.620 of 2011, dated 08.12.2011, is hereby set aside and accordingly, this Civil Revision Petition is allowed with the above directions. The Court below is directed to complete the proceedings in O.S.No.01 of 2003 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Principal District Munsif, Manamadurai.

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-85850[F] dated 09/09/2019)

C.R.P. (MD) (PD)No.372 of 2012
06.09.2019

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