



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.02.2019

CORAM :

THE HONOURABLE MRS.JUSTICE **S.RAMATHILAGAM**

CRP(MD) No.715 of 2018(PD)

and

C.M.P. (MD) No.3144 of 2018

1.Kandasamy

2.Velusamy

... Petitioners/Respondents 1 and 2/
Petitioners/Plaintiffs 1 and 2

vs.

1.Anbumani

2.Tamilarasi

3.Thangavel

4.Perumayee

...Respondents/Petitioners/
Respondents/Defendants 1 to 4

5.Duraisamy

6.Ramasamy

... Respondents/Respondents 3 and 4/
Petitioners 3 and 4/plaintiffs 3 and 4

PRAYER:- Civil Revision Petition filed the under Article 227 of the Constitution of India, to call for the records relating to the fair and decreetal order made in I.A.No.1435 of 2016 in I.A.No.1392 of 2015 in O.S.No.488 of 2015 dated 22.01.2018 on the file of the Additional District Munsif Court, Karur and set aside the same and allow this Civil Miscellaneous Petition.

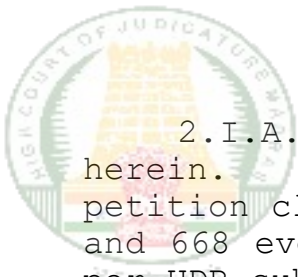
For Petitioners : Mr.I.Velpradeep

For R1 to R4 : Mr.S.Deenadhayalan

For R5 & R6 : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order order passed in I.A.No.1435 of 2016 in I.A.No.1392 of 2015 in O.S.No.488 of 2015 dated 22.01.2018 by the learned Additional District Munsif, Karur.



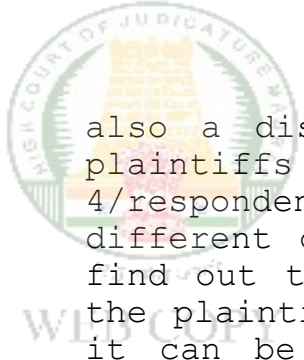
2.I.A.No.1435 of 2016 was filed by the respondents 1 to 4 herein. The petitioners/respondents 1 to 4 herein in the said petition claiming that they are entitled to the property in S.No.667 and 668 even before the plaintiffs herein claiming their right. As per UDR sub division in the year 1983, the petitioners/respondents 1 to 4 are in possession and enjoyment of the property to an extent of 3070 and 1.73 acres in S.Nos.667/4 and 668/4 and only when they were in disturbance to their possession and enjoyment, the respondents/petitioners 1 and 2 and the respondents 5 and 6 herein filed a suit in O.S.No.356 of 2016 for the relief of declaration and permanent injunction.

3.After the filing of the said suit, the petitioners herein filed a suit in O.S.No.488 of 2015 sought for appointment of an Advocate Commissioner and the Advocate Commissioner has also filed his report as per the documents that were available on the date of inspection. At the time of inspection, the respondents 1 to 4 herein/the defendants requested the Commissioner to measure the property as per the sub division, whereas, the said request was very much objected by the petitioners herein/respondents stating that the said case was filed by them and the property in S.Nos.667/4 and 668/4 should not be measured. Hence, the respondents 1 to 4 herein/the defendants contended that even as early on 05.08.2016, they have taken steps to measure the property as per the revenue records and as per the UDR sub division, but that was not acted upon by the Commissioner with the co-operation of the petitioners herein/respondents. Hence, the respondents 1 to 4 herein/defendants sought for measuring the said property that is mentioned in the suit in O.S.No.488 of 2015.

4.The trial Court observed the contention raised by both sides especially the counter statement filed by the petitioners herein/plaintiffs 1 and 2, who stated that already a commissioner application has been filed to inspect the physical features in the said suit property in the said S.Nos., and a report and plan were also submitted and there is no need to appoint the Advocate Commissioner once again for the purpose of inspecting the physical features of the said suit property.

5.The trial Court clearly discussed the right over the property in the said S.Nos., for claiming title. Both the defendants and the plaintiffs purchased the property from one Kaliammal and the dispute between the plaintiffs and the defendants is only with regard to the four boundaries and further observed that as per the measurement mentioned in I.A.No.1435 of 2016, the description as mentioned in I.A.No.1392 of 2015 and the Commissioner has to measure both the items that is described in both petitions with all measurements as per the sub division documents with the assistance of the Surveyor.

6.In view of the above, this Court finds that both the petitioners and the respondents are possessing the properties in the said S.Nos., by way of purchasing from one Kaliammal and there is



also a dispute with regard to the four boundaries and both the plaintiffs 1 and 2/the petitioners herein and the defendants 1 to 4/respondents 1 to 4 herein have filed the different suits on different dates and hence, it is necessary for the trial Court to find out the exact measurement of the said S.Nos., in which, both the plaintiffs and the defendants are claiming the same extent and it can be very well identified only with the assistance of the Commissioner.

7.Considering the facts and circumstances of the case, there is no merit in this Civil Revision Petition and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar()

To

The Additional District Munsif,
Karur.

+1. C.C. To Mr.S.Deenadhayalan Advocate SR.No.50788

CRP (MD) No.715 of 2018
28.02.2019

SP/SAR- /05.04.2019/3P/3C