



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.03.2019

CORAM

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

C.R.P(PD) (MD)No.1230 of 2014

and

M.P. (MD) No.1 of 2014 and C.M.P. (MD)No.594 of 2019

Hepsi Beaula : Petitioner/Petitioner/Defendant

.. Vs ..

Valsalakumari : Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order passed in I.A.No.344 of 2012 in O.S.No.62 of 2008, dated 05.02.2014 on the file of the Subordinate Judge, Kuzhithurai and allow the above Civil Revision Petition.

For Petitioner : Mr.G.Ramanathan

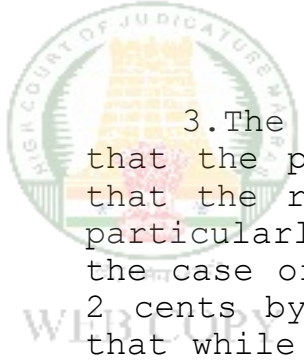
For Respondent : Mr.M.Saravanan

- - - - -

ORDER

This Civil Revision Petition is preferred by the sole defendant in the suit in O.S.No.62 of 2008 on the file of the Sub Court, Kuzhithurai.

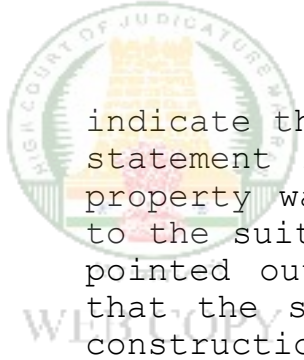
2.The respondent, as plaintiff, filed a suit in O.S.No.62 of 2008 for declaration of title in respect of 'B' Schedule property and consequential relief of recovery of possession from the revision petitioner after removal of the constructions put up by the defendant in the suit property. The suit is also for past and future mesne profits. Further, relief prayed for in the suit is to grant a decree for demarcation of 'A' Schedule from the defendant's property lying east and south of plaint 'A' Schedule property and to permit the plaintiff to put up boundaries along the eastern and southern demarcating lines through Court. The respondent/plaintiff contended in the suit that she purchased the plaint 'A' schedule property on 09.02.1998. The plaintiff, therefore, claim title on the basis of the Registered Sale Deed dated 09.02.1998 from one Ushakumari.



3. The suit was contested by the revision petitioner stating that the plaintiff is not entitled to any relief in the suit and that the relief of recovery of possession is barred by limitation particularly by raising a plea of adverse possession. It is also the case of the defendant that the defendant purchased an extent of 2 cents by a sale deed dated 03.10.1994. It is her further case that while putting up construction in the property purchased by her in 1994, she extended such a construction to a portion within the property of plaintiff's vendor to an extent of 700 sq. lings with the permission of owner. It is not in dispute that the revision petitioner has earlier filed an application for appointment of Advocate Commissioner and the Advocate Commissioner had filed a report and plan after inspection of the property. Though the revision petitioner wanted the Advocate Commissioner to mention in his report whether the entire building is constructed in the same basement and the entire building was constructed during the same period, the Commissioner in his report stated that it is not possible to find out. Thereafter, the revision petitioner filed interlocutory application in I.A.No.344 of 2012 to depute an Engineer from Public Works Department, Kuzhithurai Section or any other Chartered Engineer to ascertain the age of the building that is standing in the plaint 'B' schedule property and the remaining portion of the building standing in the defendants adjoining land. The said application was disposed by the trial Court after recording a finding that the application is to protract the proceedings. The lower Court has further held that the Commissioner application is not maintainable as the revision petitioner wants to collect evidence. Since the revision petitioner can prove her contention by other documents and evidence, it is further stated that the petition filed by the revision petitioner is not sustainable.

4. This Court heard the learned Counsel for the petitioner and the learned Counsel for the respondents.

5. The learned Counsel for the revision petitioner submitted that the order dismissing the application for appointing Advocate Commissioner on the ground that the Commissioner application is not for the purpose of obtaining evidence but to collect evidence is erroneous as the appointment of Advocate Commissioner is essential having regard to the nature of the case where the age of the construction and the other aspects are absolutely required for an effective adjudication of the issues particularly the fact that the foundation for the whole building and construction as immediately after the purchase in 1994. The learned Counsel for the petitioner pointed out that the appointment of Advocate Commissioner to ascertain the fact whether the construction in 'B' schedule was done along with the construction in 'A' schedule is essential and important inasmuch as the issue arose for consideration in the suit is about the plea of adverse possession claimed by the defendant. It is not in dispute that the defendant has raised a plea of adverse possession as well as bar of limitation. Though there are no specific averments, a reading of the whole written statement would



indicate that the specific case of the defendant even in the written statement is that the construction put up by her in the disputed property was immediately after she purchased the property adjacent to the suit property. The learned Counsel for the petitioner though pointed out the defects in the prayer, this Court is able to see that the substance of the prayer was to ascertain the age of the construction the defendant had put up in the portion of the suit property. It is also the duty of the defendant to prove that her construction was put up in 1994 to substantiate her case in the written statement. Having regard to the admitted facts extracted above, this Court is of the view that an opportunity can be given to the defendant to get an expert opinion as to the age of the building by lawful means. This would certainly minimise oral evidence.

6.The learned Counsel for the respondent no doubt pointed out that earlier report of Advocate Commissioner. It is submitted that no objection was filed to the report by the revision petitioner. Though the revision petitioner has not filed any objection, that will not impress any one to take a decision against the revision petitioner. Hence, this Civil Revision Petition is allowed and the order passed in I.A.No.344 of 2012 on the file of the Sub Court, Kuzhithurai, is set aside. The interlocutory application in I.A.No.344 of 2012 stands allowed with a direction to the Advocate Commissioner as well as the lower Court that the scope of the inspection by the expert is confined to the age of the building which is available in the portion of the suit property which is adjacent to the property of the revision petitioner. The Commissioner may also take the assistance of an expert Engineer to find out whether the whole construction was put on the same basement simultaneously. No order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS)

To

The Sub Judge,
Kuzhithurai.

+1 CC to M/s.G.RAMANATHAN, Advocate (SR-52404[F] dated 07/03/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate(SR-52560[F] dated 08/03/2019)

C.R.P (PD) (MD) No.1230 of 2014
07.03.2019