



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.04.2019

PRONOUNCED ON: 30.04.2019

CORAM

THE HONOURABLE MRS. JUSTICE S. RAMATHILAGAM

CRP (MD) .No.2500 of 2017 (PD)

and

C.M.P. (MD) .No.11755 of 2017

Chidambaram

... Petitioner/Petitioner/Plaintiff

Vs.

1.R.Chidra

2.S.Rajarathinam

... Respondents/Respondents/
Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 13.04.2017 made in I.A.No.350 of 2017 in O.S.No.117 of 2007 on the file of the District Munsif Court, Aranthangi, Pudukkottai District.

For Petitioner	: Mr.M.Suresh
For R1	: Mr.N.Balakrishnan
For R2	: Died

O R D E R

This Civil Revision Petition has been preferred against the fair and decreetal order dated 13.04.2017 made in I.A.No.350 of 2017 in O.S.No.117 of 2007 on the file of the District Munsif Court, Aranthangi, Pudukkottai District.

2.The revision petitioner herein, who is the plaintiff has filed a suit in O.S.No.117 of 2007 before the District Musif Court, Aranthangi, against the respondents for declaration and mandatory injunction and during the pendency of the said suit, he has filed a petition in I.A.No.350 of 2017 seeking for appointment of an Advocate Commissioner in the suit.

3.In the said I.A, the revision petitioner/plaintiff has contended that the suit property is a "Natham property" in Survey No.155/20 measuring an extent of 0.01.5 ares. On the western side



of the suit property, which lies in Survey No.155/19 is a Natham house site. The suit property and the western side of the property in Survey No.155/19 measuring an extent of 0.02.0 ares, is comprised with old Survey No.155/1, which are situated in a stretch of land. Further, it is contended that on the western side of the property lies in Survey No.155/19, belongs to the plaintiff's mother viz., Anjammal. The said property was given to him by his mother through gift deed on 19.04.1983. The suit property and the western side of the suit property in Survey No.155/19 originally belongs to one Ariyamuth Othuvar, S/o.Ponneri Othuvar and afterwards, from 18.07.1988, the plaintiff has purchased the said properties for valuable and proper consideration. Hence, from the date of purchase onwards, the plaintiff is in possession and enjoyment of the said properties. The suit property and the western side of the property in Survey No.155/19, measuring to an extent of "தென்வடல் கிழக்கு 122 அடியும் தென்வடல் மேற்கு 122 அடியும் கிழமேல் வடக்கு 26 அடியும் கிழமேல் தெற்கு 26 அடியும்". These measurements are very much stated in the Inam settlement deed dated 19.04.1983 and the sale deed dated 18.07.1988. The grandfather of the second defendant has purchased the eastern side of the suit property on 14.10.1957 from one Vaidiyalinga Pillai, S/o.Veera Pillai. In the said sale deed, the measurements of the property viz., East west 32 feet and North south 125 feet, are clearly mentioned. The property in the sale deed does not mention the suit property, which denotes only the eastern side of the property. Therefore, the plaintiff has filed I.A., for appointment of an Advocate Commissioner to measure the suit property.

4.At the time of inspection made by the Commissioner, it was found that there was an error in mentioning the survey number and hence, the Commissioner was not able to measure the property. Thereafter, the Commissioner has filed his interim report. In such circumstances, a Memo has been filed by the plaintiff to make amendment with regard to the survey number and the amendment was carried out. It is further contended that , without issuing notice for measuring the property, the Commissioner has filed a memo on 08.12.2017 to accept the interim report, as final report. In the aforesaid interim report, the plaintiff has filed his objection. Hence, the plaintiff has sought for appointment of a new Advocate Commissioner to measure the suit property as stated in the settlement deed and the sale deed, with the help of a surveyor and Village Administrative Officer and to file a report along with sketch or otherwise, the plaintiff will lose his right and face inconvenience.

5.The respondents have filed their counter statement stating
<https://hdservices.ecourts.gov.in/hdservices/> the plaintiff has filed a petition in I.A.No.121 of 2011 for appointment of an Advocate Commissioner. Thereafter, the Commissioner has measured the suit property with the help of



Surveyor and the Village Administrative Officer and filed his report along with rough sketch. Pursuant to which, the said I.A was closed on 08.12.2016. In such circumstances, the present I.A has been filed, after the case was taken for trial, is not maintainable and hence, the respondents/defendants have very much objected for filing the said I.A.

6.The trial Court has observed the contentions raised by both sides and the purpose of filing the I.A., and the report of the Advocate Commissioner that the plaintiff has obtained the suit property from his mother through Gift Deed on 19.04.1983 and the said suit property and the western side of the property in Survey No.155/19 originally belonged to one Ariyamuth Othuvar, S/o.Ponneri Othuvar, on 18.07.1988, and the grandfather of the second defendant has purchased the eastern side of the suit property on 14.10.1957 from one Vaidiyalinga Pillai, S/o.Veera Pillai. It is further observed that the intention of the plaintiff is to measure the afore stated three properties, with the help of Surveyor and the Village Administrative Officer and since the survey number was not properly mentioned, the Commissioner was not able to measure the properties and thereafter, the plaintiff has filed a memo to make amendment with regard to the survey number and the amendment was carried out.

7.The trial Court after observing the said facts, gave a finding that the Commissioner had measured the properties from Survey No.155/16 to Survey No.155/21 and the measurements of the properties were also mentioned in his report along with sketch and after allowing the amendment, the plaintiff has filed the present I.A., after 4 years and the trial is commenced and that the Commissioner has already measured the suit property and the western side of the property and that after the amendment of the survey number, there is no purpose for the petitioner once again to measure the property and the earlier application for appointment of Commissioner was also closed and that there is no reason for filing the present I.A., and it is filed only with an intention to delay in proceedings and that when the suit is filed for the removal of the structure and to hand over the vacant possession, the purpose of filing this I.A., at this stage is not reasonable and hence, the trial Court has dismissed the said I.A. Aggrieved against the said order, the present civil revision petition has been filed.

8.In the grounds, the learned counsel appearing for the petitioner contended that the trial Court has not considered the earlier Commissioner's interim report, wherein, it has been categorically stated that the Commissioner was not able to measure the suit property and the western side of the property and the plaintiff further contended that the trial Court has failed to note that in order to put an end and to give finality and to identify the encroachment as well as the other details, once



again, to appoint an Advocate Commissioner then only, the dispute between the parties should be resolved. It is further contended that without filing the final report, the application for appointment of Commissioner cannot be closed by the trial Court. The trial Court, after allowing the amendment, has considered the application filed by the plaintiff for appointment of commissioner is not a fair and reasonable. Hence, the order of the trial Court is liable to be set aside.

9. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

10. On a perusal of the records, it is observed that originally, the application has been filed for appointment of an Advocate Commissioner to measure the suit property with the help of Surveyor and the Village Administrative Officer and after completion of inspection, a report has been filed by the Commissioner, which would reveal the fact that the property was measured from the Survey No.155/16 to Survey No.155/21. After allowing the amendment application and subsequent to the filing of application for appointment of new Advocate Commissioner once again to measure the suit properties, does not create any new purpose. When the amendment was made in Survey No.155/19 and 155/20, the Commissioner has measured the entire survey number from Survey No.155/16 to Survey No.155/21 and filed his report. Once again, the appointment of Commissioner was made to measure the same, does not require.

11. Even after the amendment of survey number, the suit property was already measured and a report was also filed with rough sketch and the inspection was also done by the Commissioner with the help of Village Administrative Officer. Hence, the present I.A., does not have any merit and the order of the trial Court is very reasonable, which does not require any interference.

12. In the result, this Civil Revision Petition is dismissed with the cost of Rs.1,000/- to be payable by the petitioner to the credit of the Hon'ble Chief Justice Relief Fund of this Court, within a period of one week from the date of receipt of a copy of this order. However, since the suit is of the year 2007, the trial Court is directed to proceed with the trial for early disposal of the case. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //



To

The District Munsif,
Aranthangi,
Pudukkottai District.

Copy to:

The Section Officer,
Accounts Section,
Chief Justice Relief Fund,
Madurai Bench of Madras High Court,
Madurai.

1 CC to Mr.N.BALAKRISHNAN, Advocate (SR-64443[F] dated 30/04/2019)

+1 CC to Mr.M.SURESH, Advocate (SR-64501[F] dated 30/04/2019)

CRP (MD) .No.2500 of 2017
30.04.2019

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