



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 31.07.2019

CORAM :

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD)No.1097 of 2019

and

CMP(MD)No.5976 of 2019

1)Kuppathal
2)Valarmathi

... Petitioners/ Petitioners/
Plaintiffs

vs.

1)Palaniammal
2)Senthamarai
3)Vallinayagam

... Respondents/ Respondents/
Defendants

Petition filed under Article 227 of the Constitution of India, against the order dated 18.06.2019 passed by the District Munsif Court, Palani, in I.A.No.207 of 2019 in O.S.No.96 of 2012.

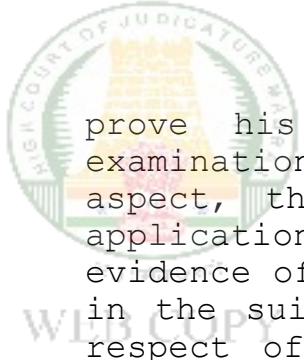
For Petitioners : Mr.T.Lenin Kumar
For R2 & 3 : Mr.R.Vijayakumar

ORDER

Against the dismissal of the petition filed to examine the Tahsildar, Palani, as a plaintiffs' side witness, this revision petition is filed.

2.The revision petitioners are plaintiffs in O.S.No.96 of 2012 filed against the respondents/defendants before the District Munsif Court, Palani, for the relief of partition and separate possession. The case of the revision petitioners/plaintiffs is that though pattas have been issued in respect of the second item of the suit property, in 'A' Register, incorrect survey numbers, extent and patta numbers have been stated and it affects the peaceful possession and enjoyment of the plaintiffs in respect of second item. Therefore, the plaintiffs filed I.A.No.207/2019 to examine the Tahsildar, Palani, to clarify the incorrect details entered in 'A' Register in respect of the second item of the suit property, which was dismissed by the Court below, against which, this revision is filed by the plaintiffs.

3.Learned counsel for the petitioners would submit that in a suit for partition, when a party pleaded that he is in possession of a particular portion through oral partition, he should necessarily



prove his possession through documents and also through the examination of revenue officials, but without considering this vital aspect, the Court below has dismissed the present interlocutory application and the Court below has also failed to note that the evidence of the proposed witness will be helpful to decide the issue in the suit and even the earlier suit filed by the plaintiffs in respect of the same property, was dismissed by the Court citing discrepancy in the revenue records and therefore, for effective adjudication of the issue in the present suit, examination of the Tahsildar is necessary. Thus, he prayed for allowing the revision petition.

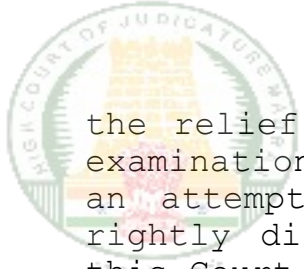
4. Learned counsel for the respondents 2 and 3 would contend that there is no discrepancy in the revenue records in respect of suit second item and having understood that there is no possibility of the suit being decreed, only in order to drag on the proceedings, the plaintiffs have filed the present petition at the stage when the suit was posted for arguments of the defendants and prior to filing of the present petition, the petitioners had also filed a petition to recall PW1 to give evidence which was also allowed. The Court below finding that there is no discrepancy in the revenue records and it is only an attempt to prolong the proceedings, has rightly dismissed the present petition which does not require interference by this Court.

5. Heard both sides.

6. The Court below found from the records that patta has been issued to the plaintiffs in respect of the suit second item measuring 0.18.5 ares in S.No.109/4F and in respect of 0.20.5 ares in S.No.109/4E, patta has been issued to the 1st respondent's husband and necessary entries have been made in 'A' Register. Perusal of record shows that the suit has been filed for the relief of partition and separate possession and no relief is claimed in the suit to rectify the discrepancy in the revenue records.

7. The Court below has relied on a judgment in Sai Jayakanth Bharathi vs. R.Kasiraj (CRP(PD)No.2313/2018 dated 26.09.2018), wherein, this Court has held that under Order XVI Rule 1(2) of the Code of Civil Procedure, a party desirous of obtaining any summon for the attendance of any person shall file in Court an application stating therein the purpose for which the witness is proposed to be summoned. The object of disclosing such purpose in the above provision is to enable the Court to decide whether examination of such witness is of material benefit to decide the dispute. The Court has to pass an order on the application and therefore, a duty is cast on the Court to consider whether the purpose of examining a witness is to speak of any material fact. If the Court is not satisfied, the Court is not obliged to issue summons to the witness.

8. In the present suit, as stated supra, no relief is claimed to rectify the discrepancies in the revenue records and it is only for



the relief of partition and separate possession and therefore, the examination of the proposed witness is not necessary and it is only an attempt to protract the proceedings. The learned Judge has rightly dismissed the petition and therefore, the interference of this Court is not necessary.

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Accordingly, this Civil Revision Petition is dismissed. no costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar

To

The District Munsif,
Palani.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-79088[F] dated 01/08/2019)

+1 CC to M/s.R.VIJAYAKUMAR, Advocate (SR-78923[F] dated 31/07/2019)

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