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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.09.2019

DELIVERED ON : 28.11.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (NPD) (MD) No.604 of 2014
and
M.P. (MD) No.1 of 2014

1.Ameetha Beevi
2.Shaul Hameed

.. Petitioners/Petitioners/
Defendants

Vs

Noorjahan

.. Respondent/Respondent
Plaintiff

Prayer : This Civil revision petition is filed under Article 227 of the Constitution of India, to set aside the order and decree made in I.A.No.1518/2013 in O.S.No.178/2011 dated 27.11.2013 on the file of the Principal District Munsif Court, Srivilliputtur.

For Petitioners : Mr.M.Thirunavukkarasu

For Respondent : Mr.Mr.S.Alagusundar

ORDER

Heard the learned counsel on either side.

2. This petition has been filed to set aside the order and decree made in I.A.No.1518/2013 in O.S.No.178/2011 dated 27.11.2013 on the file of the Principal District Munsif Court, Srivilliputtur.

3. The petitioners are the defendants and the respondent is the plaintiff in the suit.

4. The plaintiff filed a suit in O.S.No.178/2011 dated 27.11.2013 before the Principal District Munsif Court, Srivilliputtur for declaration, recovery of possession and for mandatory injunction. The suit property and other properties are government Kalam poromboke lands. The Said lands were lay out and it was assigned to 34 women Muslim minorities and pattas were issued by the proceedings of the Tahsildar dated 07.06.2002. The suit property in Plot No.213/49 was allotted to the plaintiff as per the above assignments order. The property in S.No.213/5 was allotted to the



first defendant. But, the defendants claim that the Plot No.213/49 belongs to the plaintiff, since it is just abutting the road. The defendants have encroached upon the suit property and constructed a house therein and the same cannot be prevented by the plaintiff. The plaintiff has objected the construction of the defendants in the suit property and informed the same to the Revenue officials and to the local body. The defendants have no right or title to the suit property.

5. The petitioners/Defendants filed a petition in I.A.No.1518/2013 for appointment of an Advocate Commissioner and the same was dismissed by the Trial Court. Against which, the petitioner has preferred this Civil Revision Petition.

6. The substance of the petition in I.A.No.1518/2013 is as follows:-

Even before the assignment order made in favour of the plaintiff, the defendant constructed a house and is residing in that house for more than 40 years. The plaintiff has no right or title to the suit property in S.No.213/49. To prove that the suit property is not of the plaintiff, appointment of Commissioner is necessary.

7. The substance of the counter filed by the respondent is as follows;-

Trial was commenced on 06.02.2012, after several adjournments, this petition was filed by the defendants. The suit property was assigned to the plaintiff on 26.05.1998, there is no possibility for the defendants to construct a house before 40 years. S.No.213/5 was allotted to the first defendant and S.No.213/49 was allotted to the plaintiff. The first defendant encroached S.No.213/49 and constructed a house on 15.12.2010. The petitioners/defendants filed this petition with an intention to drag on the case.

8. On the side of the defendants, it is stated that the location of the said property is doubtful. The plaintiff has admitted that the defendant was allotted S.No.213/5 and the plaintiff was allotted S.No.213/49. But, in the suit schedule property, the plaintiff has mentioned both survey numbers as well as the Plot numbers. The petition filed by the revision petitioners was dismissed by the Trial Court stating that both the parties can prove the case through documents. When the identification of the property is in question, the appointment of the Advocate Commissioner is necessary. The Judgment of this Court passed in **[2011 (3) T.N.C.J (Mad) (MB) 467]** is cited on the side of them.

"10. In the facts and circumstances of the case and after hearing the arguments advanced by the learned counsels on either side and on perusing the order and decreetal order passed in the interlocutory application, this Court is of the considered opinion that if an Advocate Commissioner is appointed to



locate the properties of the plaintiffs and defendants, with the help of a land surveyor, no one will be prejudiced, since the Advocate Commissioner's function in this case is only to define the location of the property of the parties concerned. Therefore, the fair order and decreetal order passed in I.A.No.188 of 2010 in A.S.No.79 of 2010 dated 15.03.2011 on the file of Principal Subordinate Judge, Tirunelveli is set aside. Consequently, the application in I.A.No.188 of 2010 for appointment of Advocate Commissioner is allowed.

11. In the result, the above civil revision petition is allowed. Consequently, the order and decreetal order passed in I..No.188 of 2010 in A.S.No.79 of 2010 dated 15.03.2011 on the file of Principal Subordinate Judge, Tirunelveli is set aside. Connected miscellaneous petition is closed."

9. On the side of the respondent/plaintiff, it is stated that the appointment of Advocate Commissioner is not necessary. S.No.213/5 was sub-divided into various Plot numbers and one such Plot No. 213/49 was allotted to the plaintiff and the defendants encroached the particular plot number, which was not explained in the written statement.

10. On the side of the petitioner/defendant, it is stated that when the defendants admitted the dispute regarding the identification of the suit property, appointment of Advocate Commissioner is necessary.

11. A perusal of records reveals that the Trial Court dismissed the petition that the case can be decided on the basis of the documents. It is seen that the defendants constructed a house and are residing in the house. The plaintiff is claiming right over the property in possession and enjoyment of the defendants. The plaintiff also admitted that the defendants are having some right over S.No.213/5.

12. Considering the above facts and circumstances, it is seen that there is some confusion regarding the location of the property. No prejudice will be caused to the petitioners in the appointment of a Commissioner. In the above circumstances, it is necessary that an Advocate Commissioner has to be appointed to visit the property with the help of Firka Surveyor and to file a report with FMB sketch and plan.

13. Hence, this Civil Revision Petition is allowing by setting aside the order made in I.A.No.1518/2013 on the file of the learned Principal District Munsif Court, Srivilliputtur and the Trial Court is directed to appoint an Advocate Commissioner, as per



law at the cost of the petitioner within a period of two weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar(CS)

dss

To

The Principal District Munsif,
Srivilliputtur.

+1 CC to Mr.S. ALAGU SUNDAR, Advocate (SR-102709[F] dated
29/11/2019)

order made in
C.R.P. (NPD) (MD) No.604 of 2014
and
M.P. (MD) No.1 of 2014
28.11.2019

VB(19.12.2019) 4P 3C