



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2019

CORAM

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

C.R.P (MD) No.1033 of 2011

and

M.P (MD) No.1 of 2011

K.Arulprakasam

.. Petitioner

Vs.

1. K.Sudalaimada Nadar

2. K.Soundarapandian

[R2 is impleaded vide order dated
22.06.2015 made in M.P (MD) No.
1 of 2012]

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 17.03.2011 made in I.A.No.52 of 2011 in O.S.No.31 of 2010 by the District Munsif Court, Vilathikulam.

For petitioner : Mr.C.Jegannathan
for M/s.Veera Associates

For Respondent No.1 : Mr.D.Nallathampi

For Respondent No.2 : Mr.S.Rajesh Kanna

ORDER

The petitioner / plaintiff filed the suit in O.S.No.31 of 2010 for the reliefs of declaration and permanent injunction in respect of the suit property. Pending trial, the petitioner/plaintiff filed I.A.No.52 of 2011 seeking appointment of an Advocate Commissioner to note down the boundaries of the suit property with the help of surveyor and submit his report and plan. The Court below dismissed the petition, against which, the present civil revision petition has been filed.

2.The learned counsel for the petitioner / plaintiff would submit that the petitioner / plaintiff obtained the suit property <https://hcs.easimogts.gov.in/hcsweb/> No.103/2 admeasuring 1 acre 48 cents, through partition among his brothers. But, in the computer patta, the suit survey number has been subdivided as Survey Nos.103/1B and 103/2C



admeasuring 1 acre 6 cents. Since, the respondent/ defendant is trying to sell the said 42 cents, the petitioner / plaintiff filed the suit. The petitioner / plaintiff also filed a petition seeking appointment of an Advocate Commissioner to note down the boundaries of the suit property. The learned Judge, without applying his mind, has found that the suit is filed for permanent injunction and hence, appointment of Advocate Commissioner is not necessary. Thus, he prayed to set aside the order passed by the Court below.

3.The learned counsel for the respondents would submit that the petitioner / plaintiff has no title over the suit property and the Court below has rightly dismissed the petition. Thus, he prayed to dismiss the revision petition.

4.Heard the learned counsel for the petitioner / plaintiff and the respondent / defendant and perused the records carefully.

5.Perusal of records shows that the learned Judge has passed order stating that in a suit for permanent injunction, appointment of Advocate Commissioner is not necessary. It is seen that the petitioner / plaintiff filed the suit for the reliefs of declaration and permanent injunction in respect of the suit property. The main contention raised on the side of the petitioner / plaintiff is that in the computer patta, Survey No.103/2 has been subdivided as Survey Nos.103/1B and 103/2C admeasuring 1 acre 6 cents and there is a reduction of 42 cents and the respondent / defendant is also trying to sell the said portion and therefore, he has filed the petition seeking appointment of Advocate Commissioner to note down the boundaries of the suit property along with the surveyor. Considering the fact that the suit is filed for the reliefs of declaration and permanent injunction and also considering the dispute between the parties, this Court is of the considered view that the reason assigned by the learned Judge is not acceptable. Hence, the order dated 17.03.2011 made in I.A.No.52 of 2011 in O.S.No.31 of 2010 by the District Munsif Court, Vilathikulam, is set aside and the petition filed in I.A.No.52 of 2011 is remitted to the file of the Court below for fresh consideration. The Court below is directed to pass fresh orders, keeping in view of the fact that the suit is filed for declaration and permanent injunction in respect of the suit property, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //



1. The District Munsif,
Vilathikulam.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to Mr.D.NALLATHAMBI, Advocate (SR-60028[F] dated 10/04/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-60155[F] dated
10/04/2019)

ORDER MADE IN
C.R.P (MD) No.1033 of 2011
and
M.P (MD) No.1 of 2011
09.04.2019

smn

AE (26.04.2019) 3P 6C