

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P.No. 1029 of 2018

R.Karthikeyan

..Petitioner

.Vs.

1.Lakshmi

2.V.Ramasamy

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.11.2017 in I.A.No. 1114 of 2015 in O.S.No. 1800 of 2015 on the file of the III-Additional Sub-Ordinate Judge's Court, Coimbatore.

For Petitioner : Mr.C.R.Prasanan

For Respondent : Mr.R.Kannan

O R D E R

The defendant in O.S.No. 1800 of 2015 has come up with this revision, claiming to be aggrieved by an order appointing a Commissioner to measure the suit property with help of a Surveyor and to note down the physical features.

2. The suit in O.S.No. 1800 of 2015 was filed by the respondents herein, seeking determination of the boundaries of the suit property, declaration of the title of the plaintiff, declaration that the settlement deed dated 08.04.2014 executed by the first defendant's mother Subbammal in favour of the 2nd defendant is not valid and binding on the plaintiff, granting injunction restraining the defendants and / or their men, agents etc. from in any way interfering with the plaintiff's peaceful possession of the property, mandatory injunction directing the defendants to remove the encroachment detailed in the rough sketch and described as Item 2 of the suit property measuring 8 feet breadth and 25 feet length and for possession of the property described as Item 2 and for costs.

3. According to the plaintiff, the suit properties originally belonged to their family by virtue of the purchase

made by his grand father, Sellappa Gounder on 08.12.1958. It is also claimed that the suit property was allotted to plaintiff's father Karuppusamy at a partition that took place on 07.02.2007. The said Karuppusamy executed settlement deed in favour of the plaintiff on 05.03.2012. It is also claimed that the defendants have colluded together and created a settlement deed dated 08.04.2014 through the mother of the first defendant, Subbammal in favour of the 2nd defendant based on a fraudulent Patta obtained by them. It is the further case of the plaintiff that his name was also included as a joint Pattadar.

4. The suit is being resisted by the defendants contending that the suit property was in possession of the Subbammal and she was given a natham Patta in the year 1996. The classification of the property as natham is not disputed. Therefore, Subbammal executed settlement in favour of the 2nd defendant. It is also claimed that the defendants have not encroached upon the plaintiff's property, which according to them is situated on the western side of their property. Pending suit, the plaintiff sought for appointment of an Advocate Commissioner to measure the suit property with a help of a Surveyor, note down the physical features and file a report.

5. According to the plaintiff, the Advocate Commissioner's report and measurements taken with the help of a Surveyor will reduce the bulk of the evidence in the suit. It will also demonstrate the lie of the property and boundaries, which would be helpful to the Court in deciding the first prayer in the suit. This application was opposed by the defendants contending that it is for the plaintiff to prove that he is entitled to the property with specific boundaries and specific measurements, he cannot gather evidence through the Commissioner's report. It was further contended that the plaintiff who has not come to Court with specific measurements will have to establish the same by evidence and cannot seek to fish for evidence through appointment of a Commissioner. The Trial Court, upon a consideration of the evidence concluded that the Commissioner's report will be really helpful to the Court in deciding the dispute. .

6. Parties are neighbours, the plaintiff claims encroachment over his property. The defendants would contend they are entitled to the property situate on the Western side of the suit property and whatever the construction or building put up by them is within their property and there is no encroachment by them. The parties trace their title through different sources. The first prayer in the suit is for determination of the boundaries, that could be done only when evidence regarding the exact measurement of the property and lie of the property is made available to the Court. The Commissioner's report is the best

means of proving those physical features and the actual measurements. The plaintiff is not seeking to gather evidence by appointment of Commissioner. The plaintiff is only attempting to place before the Court the physical features of the property, which could not be otherwise demonstrated before the Court in the detailed manner.

7. The Trial Court had exercised its discretion and concluded that the appointment of Commissioner would be helpful to the Court in deciding the dispute between the parties in a comprehensive manner. I do not see any irregularity or illegality to enable me to interfere with the findings rendered by the trial Court. Therefore, this Civil Revision Petition fails and it is accordingly dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:-

The III-Additional Sub-Ordinate Judge's Court,
Coimbatore.

Copy to

The Section Officer, V.R.Section, High Court, Madras-104.

+1cc to Mr.C.R.Prasanan, Advocate, Sr.No.27200

+1cc to M.K.Govi Ganesan, Advocate, Sr.No.27301

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