

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.02.2020

Coram

The Honourable Mr.Justice KRISHNAN RAMASAMY

C.R.P.No.1674 of 2011
and M.P.No.1 of 2011

A.C.Nagalingam

...Petitioner

Versus

1.Eapen Chaco

2.Leena Chacko

3.Menaka Radhakrishnan

4.Mangadu Town Panchayat,
Represented by its Executive Officer,
Managadu, Sriperumbudur Taluk,
Kancheepuram District.

5.V.Ravikumar

...Respondents

This Civil Revision Petition is filed under Article 227 of the Constitution of India praying to set aside the fair and decreetal order dated 20.12.2010 passed in I.A.No.1240 of 2010 in O.S.No.1425 of 2008 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.A.Palaniappan

For Respondents - 1 to 3 : Mr.K.R.Hariharan

Respondent - 4 : No Appearance

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O R D E R

The present Civil Revision Petition has been filed challenging the order dated 20.12.2010, passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur in I.A.No.1240 of 2010, in and by which, the learned District Munsif cum Judicial Magistrate dismissed the Interlocutory Application filed by the revision petitioner.

2. The plaintiff in the suit is the revision petitioner before this Court. Parties are referred to in the same array as in the suit.

3. The brief facts of the case reads as follows:

The case of the petitioner/plaintiff is that the suit property with larger extent of 1.00 Acre was originally owned and possessed by one Mr.Vaithialingam. The said Vaithyalingam conveyed 16 cents to the petitioner's/plaintiff's father as per sale letter dated 25.07.1978 being the southern part of the said 1 Acre. Thereafter, the petitioner's/plaintiff's father died on 18.01.2001. After the death of his father, the petitioner/plaintiff left 4 cents of the suit property for the use of the villagers to construct a temple, viz., Vembuliamman Temple and he is in possession and enjoyment of the remaining 12 cents.

3.1 While so, the respondents/defendants were trying to trespass over the suit property of the petitioner/plaintiff. Therefore, the petitioner/plaintiff filed a suit in O.S.No.1425 of 2008 before the District Munsif Court, Sriperumbudur seeking for permanent injunction, restraining the defendants, their men, agents, servants, etc., from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property either by laying road in the suit property or in any manner.

3.2 Pending the suit O.S.No.1425 of 2008, the petitioner/plaintiff filed an Interlocutory Application in I.A.No.1240 of 2010 before the District Munsif cum Judicial Magistrate Court, Sriperumbudur praying to pass an order of appointing an Advocate Commissioner to inspect and measure the suit schedule property with the assistance of the Taluk Surveyor and note down the physical features and location of the suit property with boundaries therein and file a detailed report. However, the said I.A.No.1240 of 2010 was dismissed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur vide order dated 20.12.2010.

4. The first respondent filed a counter affidavit stating that the petitioner/plaintiff has not yet filed any revenue record such as patta, chitta Adangal, kist receipt etc., in his favour to prove his possession and enjoyment of the suit property. He also contended that in between his property and the alleged suit property of the petitioner/plaintiff, there is a 30 feet road reserved at the time of granting CMDA approval of layout by the promoters about 20 years ago. Further, the petitioner/plaintiff had filed a Writ Petition in W.P.No.7406 of 2010 before this Court, challenging the proceedings calling for tender for the purpose of laying road and this Court vide order

dated 05.07.2010, disposed of the said writ petition with the following observation:

"7. Thus the petitioner who is the plaintiff in both suits is directed to pursue his right in the suits in the presence of all the respondents herein and for the said purpose is directed to implead the remaining respondents herein who are not on record as the defendants in the civil suits. The learned District Munsif, Sriperumbudur is also directed to jointly dispose of the suits within three months from the date of receipt of copy of this order and the parties are directed to extend their fullest cooperation for the early disposal of the case. In the meantime, the status quo as on today is to be maintained.

8. With the above said observation, the writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed."

He further contended that instead of proceeding with the suit, the petitioner/plaintiff has been dragging the matter by filing I.A.No.1240 of 2010.

5. The learned counsel for the petitioner submitted that the suit schedule property belongs to the petitioner and the respondents are trying to lay road on the said property. It is necessary to appoint an Advocate Commissioner to inspect and measure the suit property, then only, it will come to the light that the property over which the respondents are trying to lay road is beyond the approved layout of the said residential plots promoted by the vendors of the respondents. However, without application of mind, the Trial Court had dismissed the I.A.No.1240 of 2010 filed by the petitioner. He therefore prayed that the said dismissal order passed by the Trial Court in I.A.No.1240 of 2010 may be set aside.

6. The learned counsel appearing for the respondents 1 to 3 would contend that the respondents have purchased the suit schedule property by way of executing a proper sale deed and the said fact was even admitted by the petitioner herein. He would further contend that the petitioner has encroached the suit schedule property since 06.01.2004. Further, the property in dispute was handed over to the fourth respondent Panchayat and the Panchayat has also laid 30 feet road in the said property. He therefore submitted that I.A.No.1240 of 2010 filed by the petitioner is not maintainable in law.

7. Heard the learned counsel on both sides and perused the materials available on record.

8. From a perusal of the records, it is seen that only on

the basis of the sale Letter dated 25.07.1978, the petitioner/plaintiff filed the suit O.S.No.1425 of 2008 for permanent injunction and I.A.No.1240 of 2019 for the appointment of an Advocate Commissioner.

9. The suit filed by the petitioner/plaintiff was on the basis of a sale letter not on the basis of any sale deed. The petitioner's father said to have purchased the suit schedule property vide alleged sale Letter dated 25.07.1978. Even if the said sale letter is assuming to be a sale agreement, the petitioner/plaintiff is supposed to have laid a suit at least within a period of one year from the date of the said sale letter. But, in the present case, the petitioner/plaintiff had filed the suit only in the year 2008 and thus, now the maintainability of the suit itself is in question.

10. It is crystal clear that the petitioner/plaintiff had filed I.A.No.1240 of 2010 only with an ulterior motive to collect evidence by way of appointment of an Advocate Commissioner. Therefore, the Trial Court had rightly dismissed the said Application. Even, this Court cannot entertain such Application. I do not find any infirmity in the order of the Court below.

11. In the result, this Civil Revision Petition is dismissed and the order dated 20.12.2010 passed by the learned District Munsif cum Judicial Magistrate, Sriperumbudur in I.A.No.1240 of 2010 is confirmed. Considering the fact that the suit is of the year 2008, the learned District Munsif, Sriperumbudur is directed to dispose of the suit within a period of five months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mrr

To

1.The District Munsif,
Sriperumbudur.

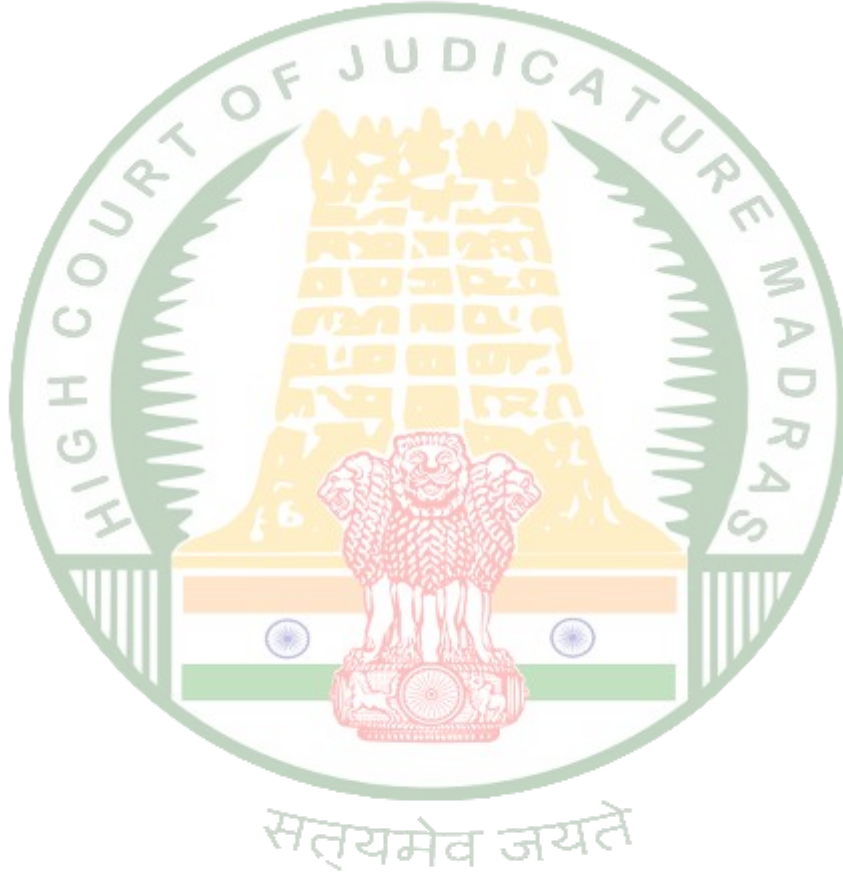
2.The District Munsif cum Judicial Magistrate,
Sriperumbudur.

+1cc to Mr.A.Palaniappan, Advocate, S.R.No. 9148

+1cc to Mr.K.R.Haribabu, Advocate, S.R.No. 8042

C.R.P.No.1674 of 2011

RR (CO)
GN (18/03/2020)



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