

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2020

Pronounced on: 01.12.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

CRP(PD)No.2111 of 2015

and

MP.No.1 of 2015

Perumal

... Petitioner/Respondent/Plaintiff

Vs.

1.Arjunan

2.Anbazhagan

3.Narayanan

4.Raman

5.Ravichandran

6.Omsakthi

7.Thanthoni

8.Ellammal

9.Saroja

10.Rajeswari

... Respondents/Petitioners/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the Order and Decreetal Order dated 21.01.2015 passed by the learned District Munsif, Madurantakkam, Kanchipuram District, allowing the I.A.No.1817 of 2014 in O.S.No545 of 2014.

For Petitioner : M/s.N.Nagu Sah

For Respondents : M/s.M.S.Subramanian

ORDER

This Civil Revision Petition has been filed by the Respondent / plaintiff against the Order passed by the District Munsif, Madurantakkam in I.A.No.1817 of 2014 in O.S.No.545 of 2014 dated 21.01.2015.

2. The respondents herein/defendants had filed an application in I.A.No.1817 of 2014 on the file of the District Munsif, Madurantakkam, under Order 26 Rule 9 of CPC to appoint an Advocate Commissioner to note down the physical features of the suit property and file a report with plan. The learned District Munsif, by the Order dated 21.01.2015 had allowed the said application and appointed an Advocate Commissioner directing him to inspect the suit property and note down the physical features and file a report with plan. Feeling aggrieved, the respondent/plaintiff has filed the present Civil Revision Petition.

3. Heard Mr.N.Nagu Sah, the learned counsel for the petitioner/plaintiff and Mr.M.S.Subramanian, learned counsel for the respondents/defendants.

4. The learned counsel for the petitioner has submitted that the petitioner herein had filed a suit to declare his title over the suit property and for permanent injunction restraining the respondents herein from interfering with his peaceful possession and enjoyment of the suit property and to declare the partition deed dated 02.12.2010 as null and void in respect of the suit property alone. He further submitted that the respondents/defendants in their written statement have taken a stand that the suit property is in their possession and pleaded adverse possession and in such a case, they have to prove their possession by adducing oral and documentary evidence. He further submitted that it is well settled that the Advocate Commissioner cannot be appointed to prove the possession and enjoyment of the property and without considering the said fact, the trial court had allowed the application filed by the respondents herein and appointed an Advocate Commissioner and therefore, he prayed to allow this Civil Revision Petition and set aside

the order passed by the trial court in I.A.No.1817 of 2014 and dismiss the said application.

5. Per contra, the learned counsel for the respondents/defendants has submitted that the defendants, in their additional written statement, have pleaded that the suit properties are irrigated through Service Connection No.25, through electric Motor situated in S.No.290/3B and they also stated that they have raised paddy crop in the suit property and in order to establish the same, the respondents/defendants had filed an application in I.A.No.1817 of 2014 to appoint an Advocate Commissioner and the learned District Munsif, after taking into consideration of the aforesaid facts, had rightly exercised his discretion and allowed the said application and appointed an Advocate Commissioner to note down the physical features and file a report with plan. He further submitted that in the said order, this Court need not interfere and therefore, he prayed to dismiss this Civil Revision Petition.

6. A perusal of the typed set of papers filed by the petitioner would show that he had filed a suit in O.S.No.545 of 2014 on the file of the

District Munsif, Madurantakkam, to declare his title over the suit property and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property and also to declare the partition deed dated 02.12.2010 as null and void in respect of the suit property alone. The defendants filed written statement stating that they had purchased the property in the year 1963 which is situated just adjacent to the suit property. From that date onwards, they have been enjoying the said property along with the suit property and thereby, they perfected title by adverse possession over the suit property. They had subsequently filed an additional written statement stating that they are irrigating the suit property from the well situated in S.No.290/3 B and raised paddy crop.

7. At this juncture, it would be relevant to refer to the decision in ***Chelladurai and 5 others Vs. Perumal Nadar 1998-3-LW-119*** wherein this court in paragraph No.9 has observed as follows:

"9. According to me, Ex.C-1 report and Ex.C-2 plan will have a great bearing in deciding the issue in this case. Unfortunately, the lower appellate court has not taken into consideration that material evidence, except for a mere

statement that a Commissioner's report has been filed. There is no discussion about Exs.C.-1and C-2 report and plan. Why I am referring to Ex.C-1 report is because, nobody has got any objection to the lie of the property as identified by the Commissioner. It is an impartial report even according to both parties, and the same has been prepared by an independent person. All the other piece of evidence are interested. I am not saying for a moment that the Commissioner's report has to be relied on for the purpose of proving possession. I am relying on the Report and Plan only for the purpose of proving the physical features of the property, from which certain inference can be drawn."

8. From the aforesaid decision, it is clear that though the Advocate Commissioner's report and plan cannot be relied upon for the purpose of proving possession, they can be relied on for the purpose of proving physical features of the property from which certain facts can be inferred

9. In this case, according to the respondents/defendants, they have been enjoying the suit property along with other properties and they are

irrigating the suit property from the Well which is situated in S.No.290/3B and raised paddy crops. In the plaint schedule, the plaintiff has described the property as dry land situated in S.No.290/1B5 measuring 0.10.5 hectares equal to 26 cents. Though the petitioner has stated in his plaint that he is in possession of the said property, he has not stated how he is enjoying the said property. Further, he has not stated that he is cultivating the said land by raising any crop. But, the respondents herein have stated in their additional written statement and also in the affidavit filed in support of the application in I.A.No.1817 of 2014, that they have raised paddy crop in the suit property by irrigating the said land through the electrical motor situated in S.No.290/3B. Therefore, this Court is of the view that if the Advocate Commissioner is appointed and filed a report with plan by noting down the physical features that would help the Court to decide the issue as to the nature of the enjoyment. The trial court, taking into consideration the aforesaid facts, had rightly allowed the application in I.A.No.1817 of 2014 and appointed an Advocate Commissioner. This Court does not find any irregularity or illegality in the said order. Hence, this Civil Revision Petition is liable to be dismissed.

10. In the result, this Civil Revision Petition is dismissed.

Consequently, connected miscellaneous petition is closed. No costs.

01.12.2020

Index:Yes / No

Speaking Order/Non-Speaking Order

gv

P. RAJAMANICKAM.,J.

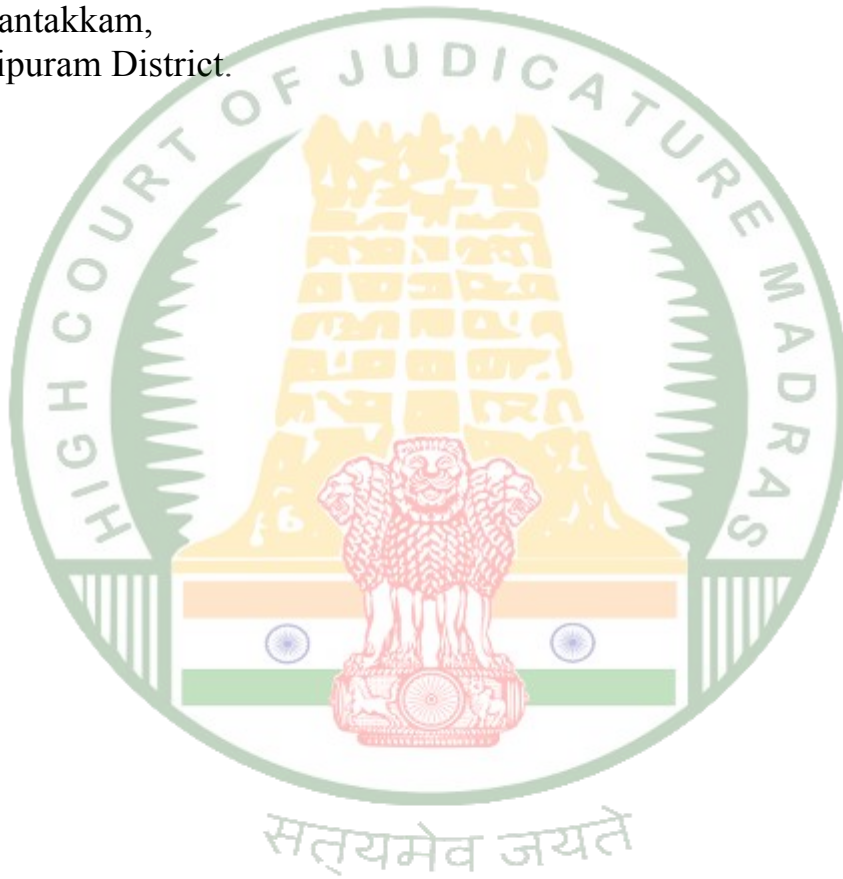
Today, when this matter is taken up for pronouncing order, the learned counsel for the petitioner has submitted that just now he has been informed that the petitioner died on 19.05.2019 itself. This matter lastly came up for hearing on 10.11.2020. On that date, the learned counsel for the petitioner has not informed to the court as petitioner already died, but he has argued on merits and the learned counsel for the respondent also argued and orders reserved. Only today, the learned counsel for the petitioner has submitted that the petitioner already died. Since already both sides counsel argued and order also prepared, order is being pronounced in this matter.

01.12.2020

gv

To

- 1.The District Munsif,
Madurantakkam,
Kanchipuram District.

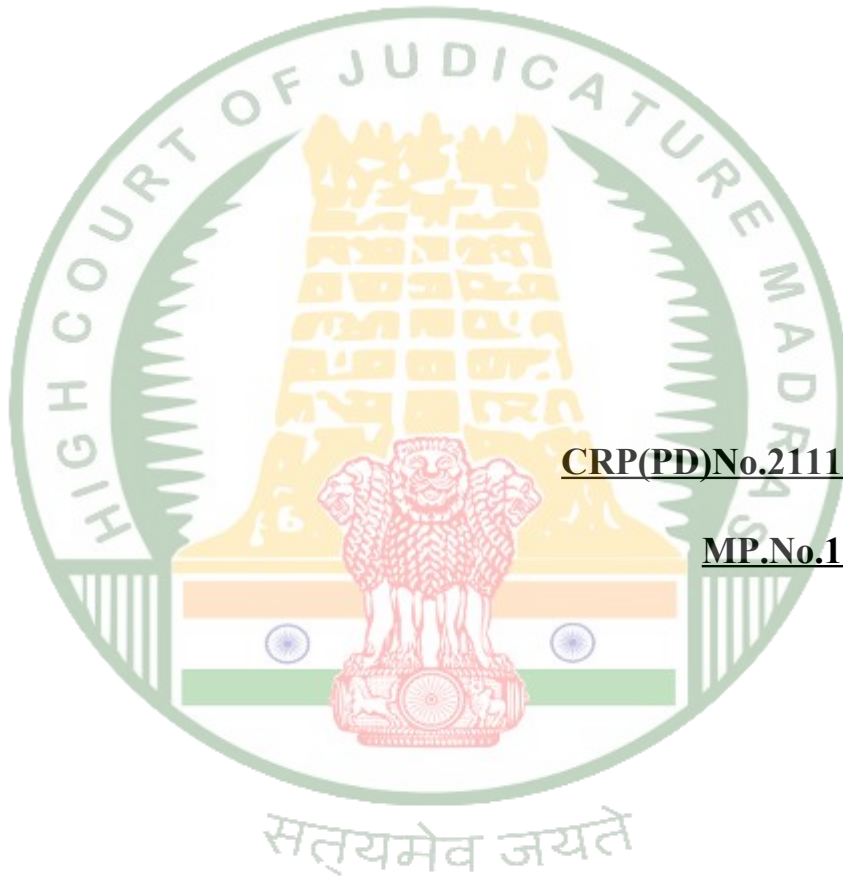


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