

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRP (PD)No.4281 of 2015

and

M.P.No.1 of 2015

L. Venkatachalam

... Petitioner/Defendant

vs.

1.C.Natarajan

2.N. Vijayalatchmi

...Respondents/Plaintiffs

PRAYER:

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 10.09.2015 made in I.A.No.1395 of 2014 in O.S.No.213 of 2014 on the file of the District Munsif Court at Sankari.

For Petitioner

...

Mr.R.Marudhachalamurthy

For Respondents

...

Mr.L.Mouli

ORDER

This Civil Revision Petition has been filed by the petitioner / defendant against the order passed by the District Munsif, Sankari, in I.A.No.1395 of 2014 in O.S.No.213 of 2014 dated 10.09.2015.

2. The respondents herein had filed an application in I.A.No.1395 of 2014 in O.S.No.213 of 2014 on the file of the District Munsif, Sankari, under Order 26 Rule 9 Section 151 of CPC to appoint an Advocate Commissioner to inspect and measure the suit property by referring to the sale deed dated 02.11.1998 and file his report with plan. The learned District Munsif, Sankari, by the order dated 10.09.2015 had allowed the said application. Feeling aggrieved, the defendant has filed the present Civil Revision Petition.

3. Heard Mr.R.Marudhachalamurthy, learned counsel for the petitioner and Mr.L.Mouli, learned counsel for the respondents.

4. The learned counsel for the petitioner has submitted that the petitioner herein and the respondents are adjacent land owners. He further submitted that the petitioner's property is situated in S.No.31/1A1 whereas the property of the respondents is situated in S.No.31/1A3. He further submitted that the respondents have filed a suit for permanent injunction restraining the petitioner herein from interfering with their peaceful possession and enjoyment of the suit property and subsequently, they filed an application in I.A.No.1201 of 2014 to appoint an Advocate Commissioner stating that the petitioner herein has made an encroachment in the suit property. He further submitted that the petitioner herein has not made any encroachment as alleged by the respondents in their plaint. On the contrary, he is in possession of his property alone. Since the properties of both the parties are situated adjacently unless the properties of both the parties are measured by referring to revenue records, the Commissioner or Court cannot come to the conclusion as to whether any encroachment is made by the petitioner herein. He further submitted that the petitioner had filed a memo before the trial court stating that the Commissioner may be directed to measure and fix the boundaries of the properties of both the

parties, but the trial court had allowed the application directing the Commissioner to measure the property by referring to the sale deed of the respondents herein dated 02.11.1998 and the said approach of the trial court is against the settled principles of law and therefore, he prayed to modify the said order and direct the Advocate Commissioner to measure the properties of both the parties by referring to the revenue records alone.

5. Per contra, the learned counsel for the respondents/plaintiffs has submitted that the first respondent had purchased the suit property from the petitioner herein under a registered sale deed dated 02.11.1998 and thereafter, the petitioner herein made attempts to encroach the said property and hence, the respondents were constrained to file a suit for permanent injunction and thereafter, the petitioner herein had made some encroachments and hence, the respondents had filed an application in I.A.No.121 of 2014 to appoint an Advocate Commissioner to inspect the suit property and measure the same by referring to the sale deed dated 02.11.1998. He further submitted that since the petitioner herein is the vendor of the respondents, he cannot raise any objection to measure the suit

property by referring to the said sale deed. He further submitted that the trial court taking into consideration the aforesaid facts, had rightly allowed the said application by giving direction to the Advocate Commissioner to measure the suit property alone by referring to the said sale deed and in the said findings, 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 the respondents herein had filed a suit in O.S.No.213 of 2014 on the file of the District Munsif Court, Sankari, to restrain the petitioner herein from interfering with their peaceful possession and enjoyment of the suit property. Admittedly, the petitioner herein was the original owner of the suit property and he sold the said property under a registered sale deed dated 02.11.1998 in favour of the first respondent and that being so, it is not open to the petitioner to object for measuring the suit property by referring to the said document.

7. It is also to be pointed out that in the affidavit filed in support of the application in I.A.No.1201 of 2014, the respondents have stated that after filing of the suit, immediately, the petitioner herein had encroached a portion of the suit property and hence, an Advocate Commissioner has to be appointed to inspect and measure the suit property as per the sale deed dated 02.11.1991. The petitioner herein has not filed a counter denying the allegations made in the said affidavit. On the contrary, he filed a memo stating that the suit property is situated in S.No.31/1A3 and his property is situated in S.No.31/1A1 and both the properties are adjacent to each other and that the Advocate Commissioner may be directed to measure and fix the boundaries in respect of both the properties. In the said memo, the petitioner herein has not at all made any objection that the property should not be measured by referring to the sale deed of the respondents herein. So, it is not open to him to raise the said objection in this Civil Revision Petition.

8. Considering the fact that the properties of both the parties are situated adjacent to each other, if the Advocate Commissioner measures the properties of both the parties by referring to their sale deeds and also

revenue records with the help of a qualified surveyor and Village Administrative Officer, that would help the Court to take proper decision in the suit. Hence, this Civil Revision Petition has to be disposed of with the aforesaid direction.

9. In the result, this Civil Revision Petition is disposed of with the direction that the Advocate Commissioner has to inspect the properties of both the parties which are situated in S.No.31/1A1 and S.No.31/1A3 and measure the said properties with reference to the sale deeds of both the parties and revenue records including FMB with the help of a qualified surveyor and Village Administrative Officer, and file a report with plan. Consequently, connected miscellaneous petition is closed. No costs.

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09.12.2020

Index: Yes/No
Speaking/Non-speaking Order
Gv

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P. RAJAMANICKAM,J.
gv

To

The District Munsif Court,
Sankari.



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