

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P. (PD) No.222 of 2018
and CMP No.1271 of 2018

K.Nallasamy (Died)

1. Deepa

2. Minor N.Yogaversini

3. Minor N.Sugesh

.. Petitioners

2 & 3 Minors are represented by their mother and natural guardian
Mrs.Deepa the 1st petitioner herein

Vs.

1. Chenniappan

2. C.Subramani

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order dated 24.11.2017 made in I.A.No.1226 of 2017 in IA No.542 of 2014 in O.S.No.687 of 2011 on the file of the Principal District Munsif, Erode.

For Petitioners : Mr. P.Kannan Kumar

For Respondents : No appearance

ORDER

This matter is taken up for hearing through Video-Conferencing.

The legal representatives of the plaintiff in OS No.687 of 2011 who were impleaded as plaintiffs 2 to 4 on his death on 20.03.2017 have come up with this Revision challenging an order of the Trial Court dismissing their application to reopen the application in IA No.542 of 2014, an application for appointment of Commissioner which was closed on 26.10.2017.

2. The suit is for declaration of title and permanent injunction. The original plaintiff Nallasamy claimed that the suit properties along with a larger extent of measuring 4.88 acres in S.F. No.110 originally belonged to Chennimalai Gounder, his paternal grandfather he having purchased the same under the Sale Deed dated 13.06.1930. It is further averred that Chennimalai Gounder died leaving behind his son Kolandasamy and daughter Arukkani. The said Arukkani released her half share in favour of her brother

Kolandasamy under a released deed dated 27.02.2007, thus Kolandasamy became the owner of the entire 4 acre 88 acres.

3. The land in Survey No.110 measuring about 4 acres 88 cents was assigned Resurvey Nos.160/1,2 &3 and 159/2 at the time of resurvey. The said Kolandasamy, his son Nallasamy (original plaintiff) and his daughter Jayalakshmi jointly sold an extent of 2 acres 42 cents to various persons. The remaining 2 acres 46 cents continued to be in their possession. It is claimed that the Jayalakshmi daughter of Kolandasamy and Kolandasamy released their respective 1/3rd share in favour of the plaintiff Nallasamy under a registered Release Deed dated 02.05.2007 and thus, the plaintiff Nallasamy became the owner of the entire property measuring 2 acres 46 cents. On the strength of the above allegations, the plaintiffs sought for declaration of his title and permanent injunction.

4. The suit was resisted by the defendants contending that the boundaries given by the plaintiffs are not correct. It is stated that there is a 5 feet wide bund on the eastern side of the property i.e., eastern side of Survey

3/8

No.110 (R.S. No.169) and there was a dispute regarding the right over the said bund between the father of the plaintiff Kolandasamy and the defendants. It is also claimed that there is a live fence on the west of the bund and the plaintiff's property is situate only on the west of the live fence.

5. From the averments in the plaint and the written statement, it could be gathered that the dispute is essentially as to one of the demarcating boundaries between the properties of the parties. Pending suit, even during his lifetime, the plaintiff Nallasamy filed IA No.542 of 2014 seeking an order for appointment of Commissioner to demarcate the boundary line between the properties. The said application was allowed and the Commissioner was also appointed. It appears that the Commissioner visited the property and measured the property. He could not complete his work due to non-availability of the old Revenue Records in the office of the Village Administrative officer at the time of inspection. Therefore, the Commissioner did not file a report. In the interregnum, the first plaintiff Nallasamy died on 20.03.2017 and the plaintiffs 2 to 4 were brought on record as his legal representatives. After they being impleaded as the legal representatives of

4/8

the deceased plaintiff, the plaint and IA No.542 of 2014 were amended on 09.08.2017.

6. While things stood thus, the Trial Court on 26.10.2017 closed IA No.542 of 2014 on the ground that the Commissioner has not filed a report. Immediately on 30.10.2017, the petitioners herein, who were the impleaded as plaintiffs 2 to 4, filed an application in IA No.1226 of 2017 to reopen IA No.542 of 2014 which was closed on 26.10.2017.

7. The application was resisted by the defendants contending that the application it is only a device to delay the suit.

8. The Trial Judge dismissed the application concluding that the commissioner application has been unnecessarily kept pending for more than 5 years. I am unable to sustain the view of the Trial Court. Admittedly the application in IA No.542 of 2014 was closed only on 26.10.2017. Any delay prior to that is attributable only to the Commissioner appointed by the Court and the Court itself. The petitioners cannot be held responsible for the

inaction of the Commissioner. If an officer of Court has been entrusted with the duty to be performed and he fails to perform his duty, it is for the Court to call upon him to perform the duty or to remove him and appoint some other Commissioner. The Court cannot keep the application pending for 3 years, close it after 3 years and thereafter blame the parties for its inaction.

9. As could be seen from the records IA No.542 of 2014 was closed on 26.10.2017 and immediately within 4 days, the petitioners who were brought on record as plaintiffs in the suit only in August 2017 had filed an application to reopen the application for appointment of Commissioner. The Courts are expected to be little more practical and liberal in such cases where certain amount of negligence is attributable to the Court also. I therefore find that the dismissal of the application for reopening is wholly unjust and needs to be interfered with. For the foregoing reasons, the order of the Trial Court is set aside, the application in IA No.1226 of 2017 will stand allowed, the application in IA No.542 of 2014 will stand restored.

10. The Commissioner appointed in the said application is required to

complete the process and file his report within 2 months from the date of receipt of the copy of the order by the Trial Court. The Trial Court shall inform the Commissioner that he has been directed to file a report within 3 months. If the Commissioner fails to file a report within 3 months, the Trial Court shall take appropriate action to recall the warrant and also to recover the fees that has been paid to him and proceed to appoint a new Commissioner with the direction to him to perform the duties of the Commissioner as assigned in IA No.542 of 2014. The Civil Revision Petition is therefore **allowed**. No costs. Consequently, the connected miscellaneous petition is closed.

22.09.2020

jv
Index: No
Internet: Yes
Speaking order

WEB COPY

R.SUBRAMANIAN, J.

jv

To

1. The Principal District Munsif,
Erode.
2. The Section Officer,
V.R.Section, High Court of Madras.



C.R.P. (PD) No.222 of 2018
and CMP No.1271 of 2018

WEB COPY

22.09.2020