

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM: THE HONOURABLE Mr.JUSTICE R.SUBRAMANIAN

CRP.No.338 of 2018
and CMP.No.1817 of 2018

Samuthiram ... Petitioner / Petitioner / Defendant

Vs.

Panneer Selvam ... Respondent / Respondent / Plaintiff

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the fair and final order of the Additional District Munsif, Mayiladuthurai dated 28/06/2017 made in I.A.No.566 of 2015 in O.S.No.60/2012 and allow the said application.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.A.Muthukumar

ORDER

The defendant in O.S.No.60/2012, whose application, for re-issuing the warrant to the Advocate Commissioner and the Surveyor who had earlier visited the suit property and filed their reports, has been dismissed by the trial Court, has come up with this revision.

2. The suit in O.S.No.60 of 2012 was filed by the respondent/plaintiff seeking declaration of title in respect of 6 cents in Survey No.203/1 in Keezha Pattamangalam Village, Mayiladuthurai Taluk. According to the plaintiff, he had purchased 6 cents of land under the sale deed dated 30.12.1998. The plaintiff would also concede in the plaint that the defendant had purchased total extent of 4 cents of land from his vendor on 18.09.2001. It is also admitted in the plaint that an extent of 4 cent in Survey No.203/4B was sold by one Dhanarasu to Sellammal vide sale deed dated 14.09.1985. Subsequently, a rectification deed was executed on 13.08.1996 by the said Dhanarasu. In the rectified sale deed the property conveyed was shown as 1 cent in R.S.No.203/1 and 3 cents in R.S.No.203/2 instead of 4 cents in R.S.No.203/4B. Thus, the defendant is stated to have purchased the said total extent of 4 cents (1 cent in R.S.No.203/1 and 3 cents in R.S.No.203/2) vide sale deed dated 18.09.2001 from Sellammal, who was the purchaser under the

sale deed dated 14.09.1985 executed by the said Dhanarasu. It is also contended in the plaint that there was an earlier litigation between the parties with regard to this suit property and hence, a suit for injunction in O.S.No.74/2003, was filed by the present plaintiff. The suit in O.S.No.74/2003 came to be dismissed on the ground that the plaintiff has not proved his possession, and the same was confirmed in an appeal in A.S.No.10/2005. Thereafter, the defendant had also filed a suit for permanent injunction against the plaintiff in O.S.No.162/2010, in which it is claimed that he had purchased another extent of 2 cents of land in S.No.203/1 from his vendor Sellammal, under the sale deed dated 24.12.2008. According to the plaintiff, the suit in O.S.No.162/2010 was filed by the defendant, only with an intention to create a cloud over the title of the plaintiff. Claiming that this sale deed creates a clog on the title of the plaintiff, the plaintiff has sought for declaration of title and permanent injunction. Pending suit, a Commissioner was appointed. The Commissioner was asked to measure the property with the help of the Surveyor. The Surveyor and the Commissioner visited the property, measured it and filed their respective reports. The Surveyor reported that the total extent of land available in S.No.203/1 is 6 cents and not 7 cents as claimed by the parties. The Surveyor also expressed his inability to measure the 3 cents of land purchased by the defendant in R.S.No.203/1 on the ground that no sub division has been made in the revenue records. The defendant has also filed his objection to the report filed by the Surveyor and the Commissioner.

3. I am informed that the plaintiff has filed an application for amendment to the plaint, seeking to include the relief of recovery of possession and the same has been allowed. Therefore, the suit as of today is one for declaration and recovery of possession of 6 cents of land in S.No.203/1, which according to the plaintiff has been purchased by the plaintiff under sale deed dated 30.12.1998

4. The defendant filed an application in I.A.No.566/2015, seeking an order re-issuing the warrant to the same Commissioner, requiring him to measure the property on the basis of the sale deeds of the parties.

1. This was resisted by the plaintiff contending that the suit is being one for declaration and recovery of possession he has to prove his title and therefore, re-measurement of the property on the basis of the sale deed of the parties is wholly unnecessary.
- 2.

6. The trial Court concurred with the contention of the plaintiff and dismissed the application in I.A.No566/2015 filed by the defendant. Aggrieved, the defendant has come up with this revision petition.

7. Heard Mr.S.Sounthar, learned counsel for the petitioner and Mr.A.Muthukumar, learned counsel appearing for the respondent.

8. Mr.S.Sounthar, learned counsel for the petitioner vehemently contended that the Surveyor cannot return the warrant saying that he is unable to measure the property, because of absence of sub division. He should have measured the property on the basis of the sale deeds produced by the parties.

9. Contending contra, Mr.A.Muthukumar, learned counsel for the respondent would submit that the suit is one for declaration and recovery of possession, and as the plaintiff, and it is for him to prove his title to succeed in the suit. In view of the amendment carried out in the plaint, the plaintiff can succeed, only if he proves that he is entitled to 6 cents in Survey No.203/1. He would also submit that the Commissioner's report as well as the Surveyor's report show that the extent of property available in Survey No.203/1 is only 6 cents. According to him, the controversy is to the entitlement of the parties, which has to be decided in the main suit and not by way of an application for re-issue of warrant of commission.

10. As rightly contended by Mr.Muthukumar, now that the suit is one for declaration and recovery of possession and it is for the plaintiff to prove his title in order to succeed in the suit. If the defendant had purchased a portion of the property prior to plaintiff's purchase, he would be automatically entitled to precedence over the plaintiff. All these issues have to be decided based on the evidence to be let in. Hence, I do not find any necessity to re-issue the warrant of commission to have the property measured on the basis of the sale deeds of the parties. The entitlement of the parties as per the sale deeds will have to be decided by the trial Court on the basis of the evidence that is to be let in and none of the parties is allowed to fish for evidence and not on the basis of the Commissioner's report or Surveyor's report. In view of the above, I do not find any infirmity or illegality in the order of the Court below and hence, this Civil Revision Petition is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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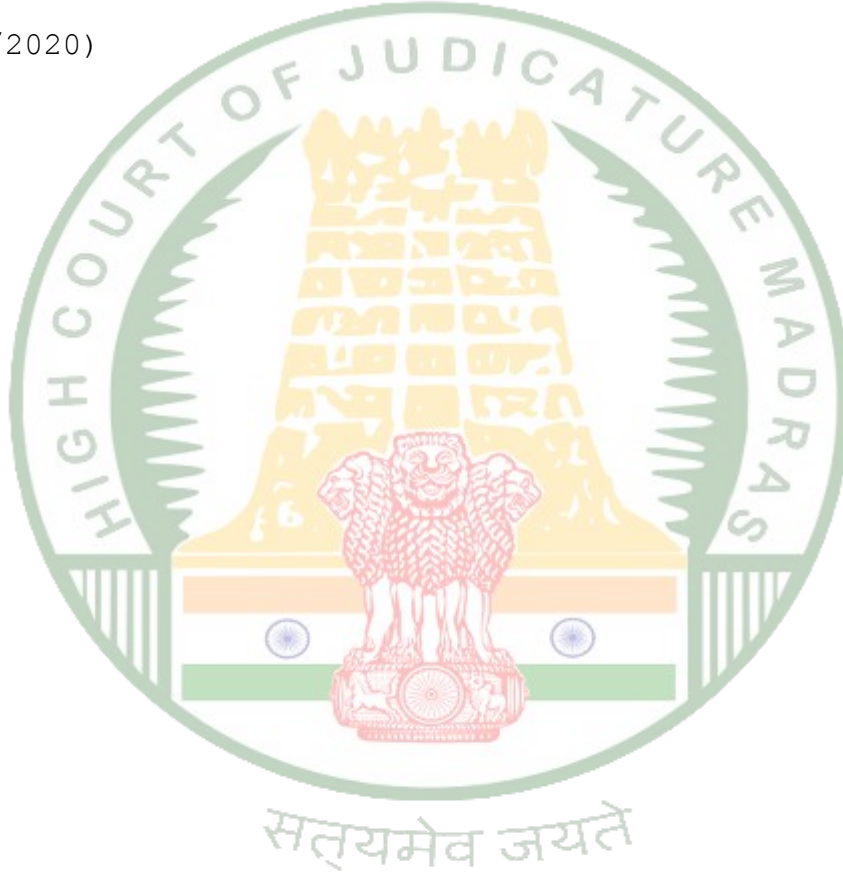
To:

1.The Additional District Munsif
Mayiladuthurai.

2.The Section Officer
VR Section,
High Court, Madras.

CRP. No.338 of 2018

MP (CO)
GMY (14/08/2020)



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