

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN
C.R.P.No. 3106 of 2018
and
C.M.P.No.17924 of 2018

V.M.Vijayalakshmi

...Petitioner

-Vs-

1. V.S.Arumugam
2. V.S.Kulandaivelusamy
3. V.P.Velliangirinathan
4. V. Kousalya
5. Tashildar, Perur Taluk,
Perur, Coimbatore District. ... Respondents

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decree of the I Additional District Munsif, Coimbatore, passed in I.A.No.587 of 2017 in O.S.No.928 of 2015 dated 29.06.2018.

For Petitioner : Mr.M.Kalyanasundaram,
Senior counsel
for Mr.R.Vasudevan

For Respondents : Mr.K.Govi Ganesan

O R D E R

The petitioner who was impleaded as a 3rd defendant in O.S.No.928 of 2015 has come up with this revision, challenging an order made in I.A.No.587 of 2017 filed by her under order I Rule 10(2) of Code of Civil Procedure, refusing to strike out her from the array of parties in the suit.

2. The suit was filed by the respondents 1 and 2 / plaintiffs seeking a direction to the 4th defendant to specify and demarcate the suit property and fix the Southern boundary of the suit property and for permanent injunction, restraining defendants 2 and 3 from interfering with the plaintiffs' peaceful possession and enjoyment of the suit property.

3. From the averment in the plaint, it could be seen that the suit property as well as the property belonging to the defendants 2 and 3 belonged to one family and at a partition that took place on 21.06.2013, the property now in possession of

defendants 2 and 3 in Survey No.663/2 was allotted to one V.P.Kumarasamy. The said V.P.Kumarasamy who happens to be the cousin of the plaintiffs, sold the property in two bits to the defendants 2 and 3. While the Northern 62 cents was purchased by the 2nd defendant, the Southern 62 cents in Survey No.663/2 was purchased by the third defendant. Claiming that the defendants have attempted to encroach upon the property and when an attempt was made by the plaintiffs to have the property measured and get the boundaries demarcated, the husband of the third defendant one S.Radhakrishnan and his brother S.Sudharsaban who happened to be Advocates, prevented the Surveyor from measuring the property. This necessitated the present suit.

4. The suit is being resisted by the defendants on various grounds. When the trial was going on, the 3rd defendant in the suit, petitioner in this revision filed the present application stating that since she does not share a boundary with the plaintiffs' property, her property need not be measured and therefore she is an unnecessary party to the suit. This application came to be dismissed by the Trial Court on the ground that the defendants 2 and 3 own an extent of 62 cents each in Survey No.663/2 which is the Southern boundary of the property of the plaintiffs. Since the 2nd and 3rd defendants own property in Survey No.663/2, it is essential to measure the entire Survey No.663/2 to fix the Southern boundary of the plaintiffs' property that is the Northern boundary of Survey No.663/2. The task of fixing boundaries, depends on the availability of survey stones. If Survey stones are not available, the surveyor has to necessarily measure the surrounding properties to find out the extent and fix the boundaries. The parties cannot claim that the Surveyor cannot measure their property in order to fix the boundary of the adjacent property, more so, when the dispute is with reference to the Northern boundary of Survey No.663/2 which is also the Southern boundary of the plaintiffs' property. The entire Survey No.663/2 may have to be measured to fix the Northern boundary.

5. Therefore, the trial Court concluded that the 3rd defendant who owns a portion of Survey No.663/2 is a necessary party to the suit. On the said finding, the trial Court dismissed the application. Hence the revision.

6. I have heard Mr.M.Kalyanasundaram, learned Senior counsel appearing for Mr.R.Vasudevan for the petitioner and Mr.K.Govi Ganesan, learned counsel appearing for the contesting respondents.

7. Mr.M.Kalyanasundaram, learned Senior counsel appearing appearing for the petitioner would vehemently contend that since the 3rd defendant's property does not share a boundary with the property of the plaintiffs, it is unnecessary for the surveyor to measure the property of the 3rd defendant and

therefore, the 3rd defendant is not a necessary party to the suit.

8. I do not think the said contention could be accepted. May be, the 3rd defendant's property does not share a boundary with the plaintiffs property, but the 3rd defendant also owns certain extent of land in Survey No.663/2 which admittedly belonged to the same person till it was sold sometime in the year 2013. The 2nd defendant and the 3rd defendant own equal extent of land in Survey No.663/2. The plaintiffs' Southern boundary will be the Northern boundary of Survey No.663/2. In order to fix the Northern Boundary of Survey No.663/2, it may become necessary to measure the entire Survey No.663/2. One cannot say that only the immediate Southern portion of the plaintiffs' property alone should be measured in order to fix the boundaries. When the surveyor measures the property to fix the boundaries, it may become necessary for him to measure the surrounding properties also, more so when survey stones are unavailable. Therefore, the Court cannot decide as to what the Surveyor should do while measuring the property to fix the boundaries. To exonerate the 3rd defendant from the suit would lead to multiplicity of litigation as there are specific allegations in the plaint that the 3rd defendant and her husband who happens to be a Advocate, had prevented the surveyor from measuring the property.

9. I am therefore the considered opinion, that the trial Court was right in dismissing the application and I do not see any scope for interference with the order particularly invoking the supervisory jurisdiction under Article 227 of the Constitution of India. Hence, the Civil Revision fails and it is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

The I Additional District Munsif, Coimbatore

+1 cc to M/s.K.Govi Ganesn, Advocate Sr.No. 26757

C.R.P.No. 3106 of 2018

and

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SSI (CO)

RMP (15/09/2020)