



WEB COPY

C.R.P.(PD)(MD)No.528 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.09.2020

DELIVERED ON : 30.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.528 of 2020

and

C.M.P. (MD)No.3363 of 2020

1.Pappathiyammal

2.Pichaiammal

3.Muthuramalingam

4.Thanushkodi

: Petitioners/Petitioners/Plaintiffs

.. Vs ..

Chellaiah Konar (Died)

1.Mookkiah Konar

2.Karuppusamy

3.Pandi

Muthumari (Died)

4.Rakku

: Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records relating to the impugned fair and decreetal order passed in I.A.No.2 of 2019 in O.S.No.281 of 2004 on the file of the Additional District Munsif Court, Aruppukottai and to set aside the same.

For Petitioners :Mr.T.Antony Arul Raj

For R2 and R3 :Mr.V.Sasi Kumar

For R1 and R4 :No Appearance

- - - -

ORDER

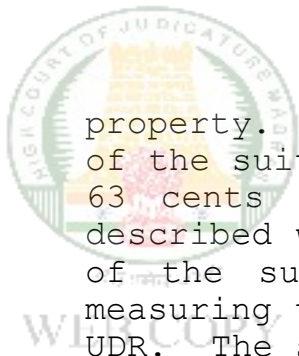
This Civil Revision Petition is directed against the order passed by the learned Additional District Munsif, Aruppukottai, in I.A.No.2 of 2019 in O.S.No.281 of 2004, dated 19.12.2019.

2.Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondents 2 and 3.

3.Brief facts that are necessary for the disposal of this revision petition are as follows:

4.The petitioners filed the suit in O.S.No.281 of 2004 for declaration of their title to the suit property and for consequential permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit

<https://hcservices.ecourts.gov.in/hcservices/>



property. The suit property is described as two items. The 1st item of the suit property is a property measuring to an extent of 2 acres 63 cents situated in S.No.8/2 in Thenur Village, which is also described with reference to new UDR survey. Similarly, the 2nd item of the suit property is also stated be a property in S.No.8/2 measuring to an extent of 38 cents corresponding to S.No.8/2C as per UDR. The suit was originally filed by one Chellam Asari, husband of first petitioner.

5.It is the case of the plaintiffs that the suit property originally belonged to one Karuppannakonar, s/o. Vilakka Konar and that the same was purchased by Thiru.Chellam Asari, the original plaintiff, under a registered sale deed, dated 17.11.1964. The suit schedule property was described as per the recital in the sale deed, apart from describing the property as per UDR survey.

6.The suit was contested by the first defendant in the suit. In the written statement, the first defendant admitted that the suit property originally belonged to Karupannakonar, s/o. Vilakkakonar and that patta was granted in favour of Karuppannakonar during settlement. It was contended by the defendants that the suit property in S.No.8/2 was purchased by the first defendant from Karupannakonar by a registered sale deed, dated 18.01.1961. It was further stated that the first defendant re-conveyed a portion of the property purchased by him, namely, an extent of 1 acres 72 cents in favour of Karupannakonar by another document, dated 19.09.1961. The first defendant, therefore, contended that the first defendant is entitled to the property, namely, an extent of 1 acre 44 cents in S.No.8/2. The first defendant also contended that he is in possession of 1 acre 44 cents and that the property, which was re-conveyed by the first defendant falls in S.Nos.8/2A4, 8/2A5 and 8/2C as per re-survey. The first defendant died during the pendency of the suit and defendants 3 to 6 were impleaded as his legal representatives.

7.During the pendency of the suit, the revision petitioner filed an application in I.A.No.187 of 2016 for appointment of Advocate Commissioner to note down the physical features of the suit property and their boundaries as per settlement records with the assistance of Additional Director of Survey and to measure and locate the suit property. The said application was allowed, after hearing both parties by appointing the Advocate Commissioner with the direction to the Advocate Commissioner to execute the warrant with the assistance of Additional Director of Survey. The Advocate Commissioner filed his report on 13.04.2017 along with plan. It is to be seen that the suit property was identified with reference to the New Survey Numbers, as the suit property is also described with reference to the New Survey Numbers.



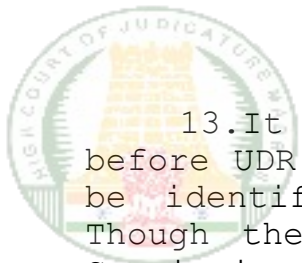
8.The revision petitioners filed objections to the Advocate Commissioner's report stating that the Additional Director of Survey was not present during the inspection and that the Advocate Commissioner did not execute the warrant with reference to old survey records. The objections are also in the nature of find fault with the Advocate Commissioner's report by stating that the Advocate Commissioner has failed to point out certain aspects and has stated something about the location of the property with reference to old survey numbers.

9.Though the objections were filed in June,2017, the revision petitioners filed another application in I.A.No.2 of 2019 to re-issue warrant to the same Advocate Commissioner to inspect the property with the help of Additional Director of Survey and to find out the physical features and boundaries of the property by taking the measurements with reference to old settlement documents and the sale deed in favour of plaintiffs and defendants. The said petition was dismissed by the learned Additional District Munsif, Aruppukottai, on the ground that the issues framed in the suit are required to be decided on the basis of documents and not on the basis of Advocate Commissioner's report, referring to the physical features and measurements. Aggrieved by the same, the present revision petition is filed.

10.The learned Counsel for the revision petitioners submitted that the Advocate Commissioner has failed to execute the warrant as per the earlier direction of the Court in I.A.No.187 of 2016. He contended further that the report of Advocate Commissioner was not as per the earlier direction and therefore, re-issuance of warrant to the same Advocate Commissioner to survey the property with the assistance of Additional Director of Survey is warranted even as per the previous order.

11.This Court considered the pleadings of respective parties before the trial Court and the contentions raised before this Court by both sides.

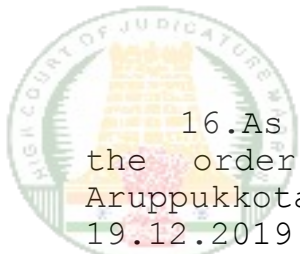
12.It is true that the trial Court earlier appointed the Advocate Commissioner with a direction to the Advocate Commissioner to measure the properties with the assistance of Additional Director of Survey on the basis of old survey records. From the nature of dispute as revealed from the pleadings, it is to be noted that the plaintiffs have to establish their title as per the sale deed obtained from the original owner in the year 1964. The first defendant claimed title through his vendor, who is none other than the vendor of original plaintiff. The real issue is about the title on the basis of documents, which are marked as Ex-A1, Ex-A14 and Ex-A15.



13.It is also worthwhile to mention that the sale deeds were before UDR and therefore, the property purchased by the parties can be identified on ground with reference to old survey records. Though the lower Court gave a direction earlier to the Advocate Commissioner to execute the warrant with the assistance of Additional Director of Survey, the assistance of Additional Director of Survey is only to locate the suit property with reference to old survey records. The Advocate Commissioner's report filed earlier refers to the measurements taken as per UDR. The Advocate Commissioner has recorded a statement that the measurements were taken with the consultation on both sides. The Advocate Commissioner in his report has observed that there is no dispute regarding the measurements and that the dispute is only regarding title.

14.The revision petitioners want the Commissioner to measure the property with the help of Additional Director of Survey. The Office of Additional Director of Survey may be in District Head Quarters. But measurements of property in relation to a dispute between two individuals need not be directed to be taken in the presence of Additional Director of Survey. However, the purpose of petitioners seeking assistance of Additional Director of Survey may be for a reason, ie., to have access to old survey records and correlation. In the present case, the Commissioner has measured the property with reference to the documents and also with reference to the revenue records corresponding to old survey numbers. The crux of the issue in this case is about the title of plaintiffs on the basis of a sale deed executed by Karuppannakonar, subsequent to the earlier sale deed executed by Karuppannakonar in favour of the first defendant under Ex-A14.

15.From the statement of facts narrated in the plaint and in the affidavit filed in support of the petition in I.A.No.2 of 2019, this Court is unable to find any reason for justifying the prayer for re-issuing warrant to the same Advocate Commissioner. The petitioners can very well produce documents to establish their title. Having regard to the facts that the petitioners have purchased the property only in the year 1964, the overlapping of properties, if any, will only show that the plaintiffs cannot acquire title based on subsequent alienations after their predecessor-in-title had already sold the property. Without establishing the title on the basis of sale deed obtained by the first plaintiff, the petitioners cannot get anything through appointment of Advocate Commissioner to prove their case. This Court is unable to find any error or irregularity in the order of Additional District Munsif dismissing the petition in I.A.No.2 of 2019.



16.As a result, this Civil Revision Petition is dismissed and the order passed by the learned Additional District Munsif, Aruppukkottai, in I.A.No.2 of 2019 in O.S.No.281 of 2004, dated 19.12.2019 is confirmed. It is made explicit that the findings or observations in this order shall not influence the trial Court while disposing of the suit. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (A.E)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

cmr

To

1. The Additional District Munsif,
Aruppukottai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate SR-18578.

Order made in
C.R.P. (PD) (MD) No.528 of 2020
30.09.2020

KM(CO)
CS(13.10.2020) 5P 5C