



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

C.R.P. (PD) (MD)No.1082 of 2019

&CMP(MD).Nos.5900, 8780 & 8781 of 2019

Rethinam ... Revision Petitioner/1st Respondent/
1st Defendant

Vs.

1.G.Radhika ... Respondent/Petitioner/Plaintiff

2.Vadivel Raja ... Respondent/2nd Respondent/2nd Defendant

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 04.06.2019 passed by the learned District Judge, Kanyakumari District at Nagercoil in I.A.No.03 of 2019 in O.S.No.109 of 2019 on the file of the learned District Judge, Kanyakumari District at Nagercoil.

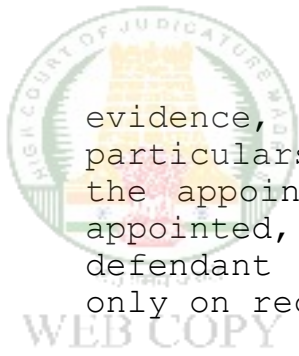
For Petitioner : Mr.Niranjana S.Kumar
For Respondent : Mr.S.Rajasekar for R1
No appearance for R2

ORDER

The revision petitioner is a defendant in O.S.No.109 of 2019 on the file of District Court, Kanyakumari District at Nagercoil. The suit is laid for declaration that the suit property falls in Sy.No.39/5 of Therelkalputhoor Village. The plaintiff has alleged in paragraph no.13 of the plaint that in his title document instead of mentioning Sy.No.39/5, it is wrongly mentioned as Sy.No.39/4, and has further alleged that taking advantage of the same, the defendants are attempting to disturb his possession.

1.2.The first respondent/plaintiff has filed a petition for appointment of a Commission to survey both the properties of the plaintiff and the defendants in terms of the boundaries of their respective title documents and for couple of other points. An ex-parte order for appointing a Commission was ordered by the trial Court. This is now in challenge.

2.The learned counsel for the revision petitioner/defendant vehemently argued that whether the property of the first respondent/plaintiff, in terms of the boundary description of his title documents, fell in Sy.No.39/5 or Sy.No.39/4 is a matter for



evidence, and that a Commission cannot be appointed to cull out particulars. Secondly, he did not have an opportunity to even oppose the appointment of a Commission, since an ex-parte Commission was appointed, and a Commissioner too visited the property. The defendant came to know about the appointment of the Commissioner only on receipt of the notice issued by the Commissioner.

3.Heard, the learned counsel for the first respondent/plaintiff.

4.It may be stated that Survey Number of the property is one of the factor for identifying a certain property. To expatiate, a property can be identified in terms of the Survey Number, or in terms of the boundaries, and in case of a conflict between boundaries and extent, generally boundaries are preferred. However, whether a Commissioner has to be appointed in the context of the case has to be decided on a broad proposition.

5.So far as the revision petitioner/defendant, his only grievance is that he was not heard.

6.In these circumstances, this Court only requires the revision petitioner to file his objection to the petition, and the trial Court is required to decide the issue on the basis of the broad proposition hereinabove indicated. However, the trial Court is not entirely bound by the proposition hereinabove indicated, since the trial Court has got its independent discretion under the procedural law to decide this matter.

7.To conclude, this Civil Revision Petition is allowed and the order dated 04.06.2019 in I.A.No.03 of 2019 in O.S.No.109 of 2019 is set aside and the revision petitioner is now required to file his objection to the Commissioner within a period of one week from the date of receipt of a copy of this order. Wherein after, the trial Court shall dispose of the matter within a period of one week thereafter. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Tsg-2



To

1.The District Judge, Kanyakumari District
at Nagercoil

2.The Section Officer,
V.R.Section, Madurai Bench of Madras High Court,
Madurai (2 copies).

+1 CC to M/s.NIRANJAN S. KUMAR, Advocate (SR-23456[F] dated
01/12/2020)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-23441[F] dated
01/12/2020)

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30.11.2020

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