



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.01.2020

DELIVERED ON : 06.02.2020

WEB COPY

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.R.P. (PD) (MD) No. 954 of 2019

and

C.M.P. (MD) No. 5411 of 2019

I.Vetrivel

.. Petitioner

Vs.

P.Kannan

.. Respondent

**Prayer:** This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the petition order of I.A.No.96 of 2019 in O.S.No.7 of 2019 dated 14.03.2019 on the file of the VI Additional District Court, Madurai.

|                |                                                                  |
|----------------|------------------------------------------------------------------|
| For Petitioner | : Mr.Veerakathiravan, Senior Counsel<br>For M/s.Veera Associates |
| For Respondent | : Mr.T.C.S.Thillainayagam                                        |

**ORDER**

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.96 of 2019 in O.S.No.7 of 2019 dated 14.03.2019 on the file of the VI Additional District Court, Madurai.

3.The petitioner herein is the plaintiff, the respondent herein is the defendant in the suit. The petitioner herein has filed a suit in O.S.No.7 of 2019 for a prayer of declaration and for injunction. In that suit, the defendant has filed an application in I.A.No.96 of 2019 for appointment of an Advocate Commissioner to visit the suit property and to measure the plaintiff's property as well as the property of the defendant with the help of their respective sale deeds.

4.The brief substance of the application in I.A.No.96 of 2019 is as follows:

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



The petitioner is the owner of the neighboring land and he purchased the property for valuable consideration through a registered sale deed. Out of total extent of 5 Acre 17 cents, the northern 3 acre was purchased by Akilandathammal and remaining 2 acre and 17 cents was partitioned among the owners and they sold out the property. 1 acre 17 ½ cents was purchased by the plaintiff. The northern 3 acre, out of total 5 acre 17 cents, was converted into an unapproved layout and plots were sold out to buyer. Plots 1, 2 and 35 were purchased by the defendant. The plaintiff tried to encroach upon the vacant land of the respondent and the plaintiff has illegally fenced the property of the defendant and the defendant want to measure the property by an Advocate Commissioner to be appointed by the Court.

5.The brief substance of the Counter in I.A.No.96 of 2019 is as follows:

The plaintiff has fenced his property. The plaintiff never encroached upon the property of the defendant. It is not necessary for the plaintiff to grab the property of anybody. The defendant only with an intention to grab the property of the plaintiff attempted to encroach the property with the help of illegal Surveyor and Village Administrative Officer and the plaintiff was constrained to file a suit but the respondent has no objection in appointment of an Advocate Commissioner to note down the physical features and to measure the petition mentioned property and the entire property in survey No.13/5 and survey No.13/4 with the help of Taluk Surveyor.

6.The trial Court after considering both sides, partly allowed the petition to measure the property in survey No.13/5B alone. Aggrieved by same, the petitioner has come forward with this revision petition.

7.On the side of the revision petitioner, it is stated that the petitioner acquired the land from one Thekkulammal and John James in survey No.13/5B. The defendant is the adjacent land owner, who purchased the plots 1, 2 and 35. The plaintiff fenced his own property. The defendant is trying to grab the property and to trespass into the property of the plaintiff and the plaintiff filed a suit for declaration and for permanent injunction. Without measuring the property in survey No.13/5 and survey No.13/4, the Commissioner report will not be of any use in disposing of the dispute.

8.On the side of the respondent, it is stated that the property to be measured is only survey No.13/5B, but the petitioner insists upon the Court to direct the Commissioner to measure the survey No.13/5A and survey No.13/4. There are 80



plots. Already the properties are measured and it is proved that the plaintiff has encroached upon the land of the defendant. When the authorities directed the defendant to remove the fence, the plaintiff filed the suit. The Commissioner petition was filed by the defendant. The plaintiff prevented the Commissioner from inspecting the property, though notice was issued by the Commissioner three times for the visit. There is no necessity to measure all the 80 plots in survey Nos.13/4 and 13/5A. It is sufficient to measure survey No.13/5B alone. It is further stated that after a survey conducted by the Revenue Department, the plaintiff pulled out the fence and the defendant took photographs of the same.

9.On the side of the revision petitioner, it is stated that only on measuring the entire lands situated in survey Nos.13/5A, survey No.13/5B and survey No.13/4, the fact that who encroached upon the property of the other can be found out.

10.On the side of the respondent, it is stated that the other property owners are not parties to the suit. It is unnecessary to measure all 80 plots.

11.The claim of the petitioner and the respondent is that the other is an encroacher. The contention of the petitioner is that both the properties are kept vacate and all the survey Nos.13/5A, 13/5B and survey No.13/4 are to be measured by the Commissioner. Since the dispute is regarding the boundaries and since no prejudice will be caused to the defendant in measuring the other properties, the Commissioner is directed to measure the entire survey No.13/5A and survey No.13/5B and survey No.13/4 with the help of a Taluk Surveyor and to file a report.

12.With the above direction, this Civil Revision Petition is allowed and the order passed in I.A.No.96 of 2019 in O.S.No.7 of 2019 dated 14.03.2019 on the file of the VI Additional District Court, Madurai is set aside. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN



To

1. The VI Additional District Judge, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate ( SR-5017[F] dated 06/02/2020 )

+1 CC to M/s.T.C.S.THILLAINAYAGAM, Advocate ( SR-5246[F] dated 07/02/2020 )

C.R.P. (NPD) (MD) No. 954 of 2019

**06.02.2020**

KG (CO)

TR(12.02.2020) 4P 4C