



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.12.2019
DELIVERED ON: 09.03.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)Nos.1373 and 1377 of 2019

and

C.M.P.(MD)Nos.7346 and 7360 of 2019

C.R.P.(MD)No.1373 of 2019 :

The Commissioner,
Padmanabhapuram Municipality,
Municipal Office,
Thuckalay Village,
Kalkulam Taluk,
Kanyakumari District. ... Petitioner /1st Respondent/1st Defendant

Vs.

1.Laila ... 1st Respondent/Plaintiff

2.Prabhavathy

3.Bhagavathy

4.Jerome ..2 to 4 Respondents /2 to 4 Defendants
(Respondent 2 & 3 set exparte in Lower Court. Hence Notice may be
Dispensed with)

Prayer in C.R.P.(MD)No.1373 of 2019 : This Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, to set aside the fair and decretal order dated 05.07.2019 passed in E.A.No.1 of 2019 in E.P.No.39 of 2015 in O.S.No.383 of 2001 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioner	: Mr.P.Athi Moolapandiyan
For 1 st Respondent	: Mr.V.M.Balamohan Thambi
For 4 th Respondent	: Mr.V.Meenakshi Sundaram
For Respondents 2 and 3	: No Appearance

C.R.P.(MD)No.1377 of 2019 :

Jerome .. Petitioner /4th Respondent/4th Defendant
Vs.

1.The Commissioner,
Padmanabhapuram Municipality,
Municipal Office,
Thuckalay Village,
Kalkulam Taluk,
Kanyakumari District. .. 1st Respondent/Appellant/1st



Defendant

2.Laila

3.Prabhavathy

4.Bhagavathy

..2 to 4 Respondents /1 & 3 Defendant

Prayer in C.R.P.(MD)No.1377 of 2019 : This Civil Revision Petition has been filed under Section 115 of the Civil Procedure Code, to set aside the fair and decreetal order dated 05.07.2019 passed in E.A.No.1 of 2019 in E.P.No.39 of 2015 in O.S.No.383 of 2001 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Petitioner	: Mr.V.Meenakshi Sundaram
For 1 st Respondent	: Mr.P.Athi Moolapandiyan
For 2 nd Respondent	: Mr.V.M.Balamohan Thambi
For Respondents 3 and 4	: No Appearance

COMMON ORDER

Heard the learned counsel appearing on either side.

2.These Civil Revision Petitions have been filed against the order passed in E.A.No.1 of 2019 in E.P.No.39 of 2015 in O.S.No.383 of 2001 dated 05.07.2019, on the file of the Principal District Munsif Court, Padmanabhapuram.

3.The prayer in both civil revision petitions are one and the same. For the sake of convenience, C.R.P.(MD)No.1377 of 2019 was taken as the lead case.

4.The first respondent in C.R.P.(MD)No.1373 of 2019 has filed a suit in O.S.No.383 of 2001 for a prayer of declaration and for injunction and for mandatory injunction. The suit was decreed in favour of the plaintiff. The plaintiff filed a petition in E.P.No.39 of 2015 before the learned Principal District Munsif, Padmanabhapuram. In that E.P., the plaintiff filed an interim application in E.A.No.200 of 2015 for appointment of an Advocate Commissioner for demolition the building and latrine within the plaint schedule property. The Commissioner has filed an application in E.A.No.1 of 2019 for a direction to the Taluk Surveyor to give necessary assistance to the Advocate Commissioner.

5.The brief substance in E.A.No.1 of 2019 is as follows:

The Court has appointed an Advocate Commissioner in E.A.No.200 of 2015 to remove the encroachment by demoliting the building. It is necessary to direct the Taluk Surveyor to assist the Advocate Commissioner for prompt execution of the decree by identifying the property.



6.The brief substance of the counter in E.A.No.1 of 2019 is as follows:

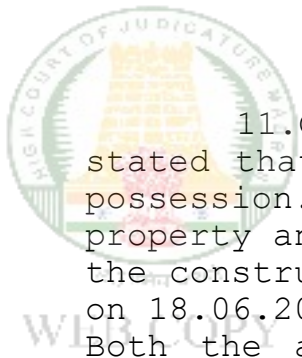
Already Advocate Commissioner was appointed at the trial stage and he has filed a report and plan, which was marked as Exs.C1 and C2. The identity of the property was never disputed. There is no necessity for the assistance of a Surveyor.

7.The trial Court after considering both sides, dismissed the petition. Against which, the petitioners have come forward with the revision petitions.

8.On the side of the petitioner, it is stated that the execution Court ought to have considered that a delay excuse petition in C.M.P.(MD)No.1735 of 2016 in S.A.(MD)No.277 of 2006 is pending before this Court and the decree holder was served with notice. The property in dispute is a public toilet constructed near the compound wall of Thuckalay bus stand. The property stated in the suit is only a vacant land measuring 1 cent. The petitioner herein and the 4th respondent put up construction in the property which is in dispute. It is the mandatory duty of the execution Court to appoint a Taluk Surveyor for execution of the decree. The Advocate Commissioner appointed in E.A.No.200 of 2016 is without the aid of a Surveyor. There is a septic tank connecting all public toilets in the Thuckalay Kamaraj bus stand and any wrongful execution of the decree will affect the public interest. The fourth defendant is having a two storied commercial building.

9.On the side of the petitioner, it is stated that the suit was filed for declaration and for injunction. The suit property with an extent of 1 cent situated within the survey Nos.3210/A2, 3211/2, 3212/1 and 3 and survey No.3236/1 which were acquired for the construction of the bus stand. The compound wall was put up in the year 1966. In the year 2001, the plaintiff filed the suit in O.S.No.383 of 2001 and the suit was decreed. The appeals in A.S.Nos.120 and 144 of 2004 were dismissed and S.A.(MD)Nos.277 of 2006 and 533 of 2006 were dismissed for default on 09.09.2014. A condone delay petition in C.M.P.(MD)No.1735 of 2016 is still pending.

10.On the side of the petitioner, it is stated that the Municipality is in adverse possession from the year 1966. The septic tank was constructed within the bus stand. The respondents filed the suit belatedly. Now the respondents are claiming ½ cents inside the bus stand and the help of Taluk Surveyor is necessary to assist the Advocate Commissioner and that the demolition of the tank will cause hardship to the general public and that when the second appeal is pending, E.P. is not maintainable and that for the benefit of the public, the petitioner is ready to pay compensation to the respondents.



11.On the side of the second respondent/decreed holder, it is stated that the suit was filed for declaration and for recovery of possession. Pending the suit, the fourth defendant encroached the property and put up the construction. Mandatory injunction to remove the construction was sought for in the suit and the suit was decreed on 18.06.2004 and appeals were filed in A.S.Nos.120 and 144 of 2004. Both the appeals were heard together and both were dismissed on 04.10.2005. Second Appeals in S.A.(MD)Nos.533 and 277 of 2006 were also dismissed for default. During the pendency of the suit, the Municipality attempted to construct a new septic tank and in S.A.(MD)No.277 of 2006, an injunction petition was filed and the first respondent violated the injunction order and constructed the building. A contempt proceedings also was taken one year after the dismissal of the second appeal, E.P. For delivery was also filed. There is no question of identification of the property. Objection memo was not filed against the Commissioner report. No memo questioning the identity of the property was filed. When the petitioner claims adverse possession, it amounts to acceptance of the title of the respondents. The fourth defendant filed a new suit in the name of his wife and that the schedule of the property is the same and he is now colluding with the Municipality and that the fourth defendant filed the civil revision petition only with a motive to delay the proceedings. The second respondent is more than 80 years old and prayed the revision petition to be dismissed.

12.On the side of the petitioner, it is stated that the petitioner is ready to pay compensation for the land that is in the possession of the petitioner. On the side of the fourth respondent, it is stated that the fourth defendant is ready for compromise but the decree holder is not willing for a compromise.

13.On the side of the petitioner, it is stated that half of the suit property is said to have been within the compound wall of the bus stand and that no clear boundary was stated in the suit property. The second appeals in S.A.(MD)Nos.277 and 533 of 2006 was dismissed for non prosecution on 09.09.2014. C.M.P.(MD)No.1735 of 2016 was filed to condone the delay of 491 days in filing the restoration petition which is still pending and no counter was filed by the revision petitioner.

14.It is seen that a portion of the suit property with a total extent of 1 cent is in the possession of the Municipality and also in the possession of the fourth respondent. In the plaint schedule of property, the description of the property is stated as land with an extent of approximately 1 cent. No measurement or four boundaries was stated. A prayer for mandatory injunction was decreed by the trial Court. But specific measurement for the portion in which mandatory injunction was sought for, was not stated in the plaint. Now the decree holder filed an E.P. Only survey numbers are stated as four boundaries and no specific measurement is given.



15. In the above circumstances, executing an order of mandatory injunction is not possible without measuring the property. The Court Commissioner cannot find out the specific measurements without the help of Taluk Surveyor. Hence, help of Taluk Surveyor is necessary to assist the Advocate Commissioner.

16. It is stated that there is a septic tank constructed by the Municipality in the disputed land. It is stated that all the toilets are connected to the septic tank. Demolishing the septic tank will cause hindrance to the public at large. To locate the suit property, the property has to be measured with the help of Taluk Surveyor.

17. It is seen that when lands were acquired for establishing the bus stand, the suit property was left out in the notification. If the Municipality is really interested, the Municipality can give suggestion for acquiring the property now. Instead of acquiring the property, the Municipality is contesting the case.

18. Hence, in the above circumstance, these Civil Revision Petitions are allowed and the order passed in E.A.No.1 of 2019 in E.P.No.39 of 2015 in O.S.No.383 of 2001 dated 05.07.2019, on the file of the Principal District Munsif Court, Padmanabhapuram is set aside. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Principal District Munsif, Padmanabhapuram.

+1 CC to Mr.P.ATHIMOOLAPANDIAN, Advocate (SR-10572[F] dated 09/03/2020)

+1 CC to Mr.V.BALAMOZHANTHAMBIR, Advocate (SR-10958[F] dated 11/03/2020)

+1cc to Mr.D.Nallathambi, Advocate Sr.No.10718

C.R.P.(MD)Nos.1373 and 1377 of 2019

09.03.2020

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