



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28.09.2020

Coram:

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD) (MD)No.1106 of 2014

and

M.P(MD)No.1 of 2014

WEB COPY

M.Samuvel

... Petitioner/2nd respondent/2nd defendant

.vs.

1.Suyambukani
2.Jeyaraj Nadar
3.Selvan

... 1st Respondent / Petitioner / Plaintiff

... Respondents 2 & 3 / Respondents 1 & 3/
Defendants1 & 3

(Respondents 2 and 3 are not contesting parties in
the above petition hence notice on them may dispense with)

Prayer:-Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order passed in I.A.No.9 of 2014 in O.S.No.46 of 2013 dated 13.03.2014 on the file of the District Munsif Court, Sathankulam by allowing this Civil Revision Petition.

For Petitioner

: Mr.H.Arumugam

For R-1

: Mr.S.R.Anbarasu

ORDER

This Civil Revision Petition has been filed by the second respondent / second defendant against the order passed by the learned District Munsif, Sathankulam in I.A.No.9 of 2014 in O.S.No.46 of 2013, dated 13.03.2014.

2. The first respondent herein has filed a suit in O.S.No.46 of 2013 on the file of the learned District Munsif, Sathankulam, for the relief of declaration of title, permanent injunction and also for mandatory injunction. During pendency of the said suit, the first respondent has filed an application in I.A.No.9 of 2014 under Order 26 Rule 9 of C.P.C, to appoint an Advocate Commissioner to measure the suit properties with the help of a Surveyor and file his report with plan. The learned District Munsif, Sathankulam by the order dated 13.03.2014, has allowed the said application. Feeling aggrieved, the second respondent / second defendant, has filed the present Civil Revision Petition.

3. Since the respondents 2 and 3 are co-respondents/co-defendants, notice to them, is dispensed with in this Civil Revision Petition.

4. After hearing the arguments of the learned counsel for the petitioner and the learned counsel for the first respondent and perusing the materials filed along with this Civil Revision

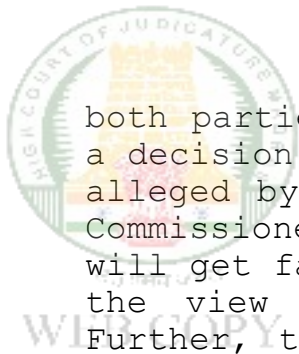


Petition, order is being passed in this Civil Revision Petition.

5. The learned counsel for the petitioner has submitted that already a decree was granted in favour of the petitioner in the previous suit and suppressing the said fact, the first respondent / plaintiff, has filed the above suit and also filed the above application seeking for appointment of an Advocate Commissioner. He has further submitted that the title deed and the revenue records stand in the name of the petitioner in respect of Survey No.1259/3A of Arasoor Village. The first respondent / plaintiff is not having any title over the properties situated in Survey No.1259/3A and only with a view to collect evidence, he filed I.A.No.9 of 2014, seeking appointment of an Advocate Commissioner. He has further submitted that the petitioner has not encroached any portion of the property, which belongs to the first respondent / plaintiff. He has further submitted that the first respondent has to establish her title over the properties situated in Survey No.1259/3A and only thereafter, the question as to whether the petitioner herein has made any encroachment over the said property or not will arise. He has Further submitted that without considering the aforesaid facts, the trial Court has erroneously allowed the application filed by the first respondent / plaintiff and appointed an Advocate Commissioner and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the trial Court and dismiss the application in I.A.No.9 of 2014.

6. Per contra, the learned counsel for the first respondent / plaintiff has submitted that the previous suit is relating to some other property and the said suit is nothing to do with the present suit. He has further submitted that the first respondent / plaintiff has filed the suit for declaration of her title, permanent injunction and also for mandatory injunction and in order to prove that the petitioner herein has encroached a portion of the land, which is situated in Survey No.1259/3A, the properties of both parties have to be measured. He has further submitted that taking into consideration the aforesaid facts, the trial Court has rightly allowed the application, which was filed by the first respondent / plaintiff, seeking appointment of an Advocate Commissioner and in the said order, this Court need not interfere with and therefore, he prayed to dismiss this Civil Revision Petition.

7. A perusal of the plaint shows that the first respondent / plaintiff has filed the aforesaid suit for declaration of her title, permanent injunction and for mandatory injunction. According to her, the petitioner herein has encroached a portion of the property in Survey No.1259/3A of Arasoor Village and in such a case, the properties of both the parties have to be measured with the help of a qualified Surveyor and with reference to the title deeds of both the parties, FMB and other revenue records and for that purpose, a Commissioner has to be appointed. If the Commissioner measured the



both parties and revenue records, that would help the Court to take a decision whether there is any encroachment in the said property as alleged by the first respondent / plaintiff or not. In case the Commissioner finds that there is no encroachment, the petitioner will get favorable order in the suit and therefore, this Court is of the view that no prejudice will be caused to the petitioner. Further, the Commissioner's report and Surveyor's plan will reduce the oral evidence and also minimize the Court's time.

8. Taking into consideration the aforesaid facts, the trial Court has allowed the said application and appointed an Advocate Commissioner. This Court does not find any illegality or irregularity in the said order and hence, this Civil Revision Petition is liable to be dismissed.

9. In the result, this Civil Revision Petition is dismissed and the order dated 13.03.2014 passed in I.A.No.9 of 2014 in O.S.No.46 of 2013 on the file of the learned District Munsif, Sathankulam, is confirmed. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The District Munsif, Sathankulam,

Copy to

The Record Keeper, (2Copies)

Vernacular Section,

Madurai Bench of Madras High Court,

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-18456[F] dated 30/09/2020)

C.R.P (PD) (MD)No.1106 of 2014

28.09.2020

SCR(CO)

KB(12.10.2020) 3P 5C

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