



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.02.2020
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(PD)(MD)No.1997 of 2019

and

C.M.P.(MD)No.10296 of 2019

Vijayalakshmi

.. Petitioner /Respondent/Plaintiff

Vs.

1.Backiyam @ Backiyathammal
Chandran (died)

2.Balan

3.Mariyammal

4.Meena @ Meenatchi Ammal

.. Respondents/Petitioners/Defendants

Prayer: This Civil Revision Petition is filed under Section 115 of Civil Procedure Code, to set aside the fair and decreetal order passed in I.A.No.365 of 2018 in O.S.No.282 of 1999 dated 04.09.2019 on the file of the District Munsif Court, Vedasanthur.

For Petitioner : Mr.R.S.Sivaram
For Respondents : Mr.N.Marimuthu
No.1, 2 7 4

ORDER

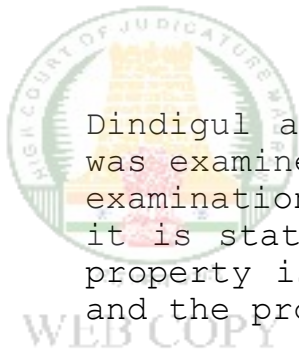
Heard the learned counsel appearing for the petitioner.

2.This Civil Revision Petition has been filed against the order passed in I.A.No.365 of 2018 in O.S.No.282 of 1999 dated 04.09.2019 on the file of the District Munsif Court, Vedasanthur.

3.The petitioner herein is the plaintiff and the respondents herein are the defendants in the suit. The petitioner herein has filed a suit in O.S.No.282 of 1999 for a prayer of declaration and for recovery of possession and for mandatory injunction to remove the super structure in the suit property. In that suit, the respondents herein have filed an application in I.A.No.365 of 2018 for appointment of an Advocate Commissioner for visiting the property. The petition was allowed by the trial Court. Against which, the petitioner herein has filed the present petition.

4.The brief substance in the petition I.A.No.365 of 2018 is as follows:

The suit was decreed on 11.07.2008 and an appeal in A.S.No.135 of 2008 was filed before the Principal Sub Judge,
<https://hcservices.ecourts.gov.in/hcservices/>



Dindigul and the case was remanded back to the trial Court. P.W.1 was examined and some documents were marked. The suit was posted for examination of defendants' side witness. In the Sub Court Judgment, it is stated that the land on the southern side of the defendants' property is to be measured in accordance with the municipal records and the property is to be measured with the help of Surveyor.

5.The brief substance of counter filed in I.A.No.385 of 2018 is as follows:

On the basis of the judgment of the Sub Court, the plaintiff examined Rajeswaran and his mother Vijayalakshmi and the revenue records were already marked and the plaintiff is claiming that he was issued with gramam natham patta during the year 1990 and no direction was issued by the Sub Court for appointment of new Advocate Commissioner or for re-issuance of warrant to the old Advocate Commissioner. The petition to appoint new Advocate Commissioner could not be entertained, since the petitioner has not filed a petition to strike off the earlier Commissioner report and prayed the petition to be dismissed.

6.The trial Court after considering both the sides, allowed the petition. Against which, the petitioner has filed this revision petition.

7.On the side of the petitioner, it is stated that the First Appellate Court remanded back the case to the trial Court with some directions to find out the measurement of the lane from the revenue records and from the municipal records and then to decide the rights of the plaintiff and the defendants. Already an Advocate Commissioner was appointed on the request of the respondents and the Commissioner has filed a report and there was no objections for the earlier Commissioner report and no petition to scrape the Commissioner report was filed by the respondents. The first Appellate Court did not authorise the trial Court to entertain the petition for appointment of a Commissioner.

8.The learned counsel for the petitioner relied on the judgment passed by this Court in the case of **Chinnasami v. Amudha and others** in **C.R.P. (NPD)No.1045 of 2011**, wherein it is stated as follows:

"17.It is well settled that until the Court is dissatisfied with the report of the Commissioner earlier appointed, it will not be proper to ignore the same and direct even further enquiry, much less the scrapping of the earlier report as a whole and appoint a fresh Commissioner. The power is circumscribed by the principles under Order 26, Rule 10 (3) of C.P.C.

18.Appointment of second Commissioner and the report filed by him without setting aside first Commissioner's report, is wholly illegal and without jurisdiction.



19.A second Commissioner must not be appointed without hearing objections to first Commissioner's report and superseding it for reasons to be recorded. If the report of the first Commissioner is found to be deficient and /or defective on any point, the proper course would be to direct the same Commissioner to cure the defects."

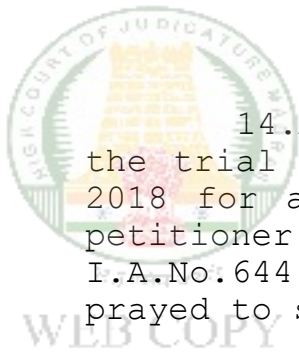
9.On the side of the petitioner, it is stated that the measurements are clearly stated in the document dated 25.02.1924. Already the suit in O.S.No.868 of 1992 was decreed in favour of the respondents. The appeal in A.S.No.94 of 1995 was dismissed on 16.09.1997 and that no second appeal was filed. The ownership of the respondents was already declared and the petitioner is estopped from claiming the same and that no measurement was stated in the plaint. The respondents got the plan approved from the municipality and has constructed the building. Patta was issued in the name of the first respondent. The respondents were paying the tax. The objection of the respondents was not considered and the measurement was not taken on the basis of the document. Only 8 years after the appointment of the Commissioner, this petition was filed by the revision petitioner. The petitioner has filed another suit in O.S.No.6 of 2018 with regard to the same property and the decree holder is fighting for his rights from the year 1999 onwards.

10.It is further stated that the petitioner has not concealed anything. The petitioner has mentioned about the earlier suit. Now the respondents have encroached the portion of the suit property and the petitioner is entitled to 16 feet.

11.It is seen that the petitioner filed a suit in O.S.No.282 of 1999 before the learned District Munsif, Vedasanthur. That suit was dismissed by the trial Court. Against which, the petitioner preferred an appeal in A.S.No.135 of 2008 before the Sub Court, Dindigul. The first Appellate Court remanded the matter back to the trial Court with a direction to examine the revenue officials and the municipal officials and to mark the documents and to decide the rights of the parties.

12.It is seen that the first respondent and others filed a suit in O.S.No.868 of 1992 against the present petitioner and others before the learned Principal District Munsif, Dindigul. The suit was decreed and the present petitioner and others filed an appeal in A.S.No.94 of 1995 and the appeal was dismissed by the Additional District Court, Dindigul.

13.It is seen that the petitioner herein has filed another suit in O.S.No.6 of 2018 against the respondents 1 and 2 herein before the learned District Munsif, Vedasanthur.



14.After the suit in O.S.No.282 of 1999 was remanded back to the trial Court, the respondents filed a petition in I.A.No.365 of 2018 for appointment of an Advocate Commissioner. The case of the petitioner is that already an Advocate Commissioner was appointed in I.A.No.644 of 1999 and the Commissioner has filed his report and prayed to strike off the earlier Commissioner report.

15.It is seen that the respondents have filed a petition for appointment of a new Commissioner and that the first appellate Court did not give any liberty to the trial Court to entertain a petition for appointment of a new Commissioner. It is seen that the litigations are going on between the parties from the year 1992 onwards. The earlier Commissioner was appointed in the year 1999 and he has filed a report on 25.02.2000. The first appellate Court has also directed the trial Court to consider the revenue and municipal records. The earlier Commissioner has not attached any revenue records and the Surveyor was not accompanied the earlier Commissioner.

16.In the above circumstances, to note down the present stage of the properties and to note down the measurement on the basis of revenue and municipal records with the help of a Surveyor is necessary. An opportunity for the respondents herein to put forth their case was given by the trial Court. There is nothing wrong in the order passed by the trial Court.

17.There is nothing sufficient enough to interfere in the order passed by the trial Court. The trial Court is directed to dispose of the original suit within a period of four months from the date of receipt of copy of this order.

18.With the above direction, this Civil Revision Petition is dismissed and the order passed in I.A.No.365 of 2018 in O.S.No.282 of 1999 dated 04.09.2019 on the file of the District Munsif Court, Vedasanthur is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN



To

The District Munsif, Vedasanthur.

+1 CC to Mr.N.MARI MUTHU, Advocate (SR-4915[F] dated 06/02/2020)

+1 CC to Mr.R.S.SIVARAM, Advocate (SR-5427[F] dated 10/02/2020)

C.R.P. (PD) (MD)No.1997 of 2019

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VB(21.02.2020) 5P 4C