



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

C.R.P (MD) No.2192 of 2019
and C.M.P (MD) No.11444 of 2019

1.Duraisamy
2.Gunasekar
3.Padma @ Padmavathy
4.Sarasu @ Saraswathy
5.Marimuthu
6.Chinnadurai
7.Subbathal

... Petitioners/Respondents 1 to 3, 6 to
10/Defendants 1 -3, 6 to 10

Vs.

1.C.Ponnusamy

...`1st Respondent/Petitioner/Plaintiff

2.The Tahsildar,
Taluk Office,
Palani Town

3.The District Collector,
District Collector Office,
Dindigul.

... Respondents 2 & 3/Respondents 4 &
5/Defendants 4 & 5

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 30.09.2019 made in I.A.No.1 of 2019 in O.S.No.202 of 2014 on the file of the District Munsif Court, Palani.

For Petitioners : Mr.P.Athimoolapandian

For R1 : Mr.M.P.Senthil

For R2 & R3 : Mr.M.Jeyakumar

Additional Government Pleader

O R D E R

This Civil Revision Petition has been filed against the fair and decreetal order dated 30.09.2019 made in I.A.No.1 of 2019 in O.S.No.202 of 2014 on the file of the District Munsif Court, Palani.



2. The first respondent filed the suit against the petitioners in O.S.No.202 of 2014 on the file of the District Munsif, Palani for permanent injunction and also mandatory injunction and to issue joint patta along with fourth defendant.

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3. During the pendency of the suit, the plaintiff filed a petition in I.A.No.303 of 2014 to appoint an Advocate Commissioner to note down the physical features and also to measure the extent. The said petition was allowed and an Advocate Commissioner was also appointed. After inspecting the suit property, the Advocate Commissioner filed a report. Based on the report filed by the Commissioner, the first respondent/ plaintiff filed an application in I.A.No. 1 of 2019 to amend the plaint.

4. The trial court, after giving opportunity and after hearing both parties, allowed the amendment application and also directed the plaintiff to amend the plaint. Challenging the said order, the defendants 1-3, 6 to 10 have filed the present Civil Revision Petition before this Court.

5. The learned counsel for the petitioners would submit that the first respondent/plaintiff has purchased property by sale deed dated 16.11.1992 in which he has purchased an extent of 54 cents in Survey No.151/2B and 22 cents in Survey No.151/2A and he has filed the suit only for the extent of 54 cents in Survey No.151/2B alone. Subsequently, taking advantage of the Commissioner's report, he had filed an application to amend the plaint for an extent of 27 cents also claiming adverse possession. The amendment changes cause of action and character of the suit.

6. The learned counsel for the first respondent/plaintiff would submit that no boundary has been changed in the amendment application and only extent alone is changed. Though in the plaint extent of land is shown as 54 cents actually the plaintiff purchased 76 cents and therefore, the Commissioner has clearly shown that the petitioner is in possession of 76 cents. Based on the report, he has filed the amendment application and the petitioners have not filed any objection to the report filed by the Commissioner and therefore, they cannot challenge the order passed by the trial Court unless they challenge the report of the Commissioner and at the beginning of the trial he has filed proof affidavit for chief examination and document has not been marked and therefore after carrying out the amendment he can file an additional written statement and he can defend the case in the trial. There is no perversity in the order passed by the trial court.

7. Heard both sides and perused the records.



8. It is the case of the first respondent/plaintiff that he is in possession of 54 cents in Survey No.151/2B. The prayer in the suit is that the defendants or their men should not encumber the suit property and also seeking a direction to issue a joint patta along with the fourth defendant. After perusing the report of the Advocate Commissioner, the first respondent/plaintiff has filed an application to amend the extent of property for 27 cents in 151/2B in addition to 54 cents in in Survey No.151/2B.

9. It is seen that the Commissioner has not ascertained the extent of the sale deed of the plaintiff and also the boundaries of each survey number and total extent of survey numbers 151/2B and 151/2A. Non filing of objection by the petitioners/defendants on the Commissioner's report has created further complication and led to file an application to amend the plaint by the first respondent/plaintiff.

10. In view of the above, in order to render real justice and to find out the truth, this Court is inclined to set aside the Commissioner's report and set aside the order passed by the trial court in I.A.No.303 of 2014. The trial court is directed to appoint a new Advocate Commissioner directing the Commissioner to inspect Survey Nos.151/2B and 151/2A and measure the total extent of Survey Nos.151/2A and 151/2B and further subdivision if any and also as on date note down the physical features and file a fresh report. In view of appointment of new Advocate Commissioner, the order passed in I.A.No.1 of 2019 in O.S.No.202 of 2014 on the file of the District Munsif Court, Palani, allowing the amendment sought for by the first respondent/plaintiff is also set aside. The trial court is directed to proceed further on the basis of the report of new Advocate Commissioner. If necessary, the first respondent/plaintiff is at liberty to file an appropriate application.

11. In fine, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

CM



To,

The District Munsif, Palani.

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+1 CC to M/s.P.ATHIMOOLAPANDIAN, Advocate (SR-10315[F] dated 06/03/2020)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-10367[F] dated 06/03/2020)

+1 CC to M/s.SPL.GP (SR-10352[F] dated 06/03/2020)

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DB (CO)

TR(13.05.2020) 4P 5C