

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.1112 of 2021
and C.M.P. No.8662 of 2021

P.Dhanapal

...

Petitioner /
Plaintiff

versus

1.R.Ganesha Reddy
2.G.Elumalai
3.G.Veerasingam
4.A.M.Periyasamy
5.A.M.Natarajan
6.A.M.Venkatesan
7.A.M.Ramesh

...

Respondents /
Defendants

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 28.10.2020 in I.A.No.3 of 2019 in O.S.No.54 of 2019 passed by the District Munsif cum Judicial Magistrate Court at Pallipattu and to allow the Civil Revision Petition.

For Petitioner

: Mr.A.Gopinath

For Respondent Nos.5 & 7

: Mr.L.Damodharan

ORDER

This Civil Revision Petition is filed to set aside the order of the learned District Munsif cum Judicial Magistrate Court, Pallipattu in I.A.No.3 of 2019 in O.S.No.54 of 2019 dated 28.10.2020.

2. I.A.No.3 of 2019 was filed under Order 26 Rule 9 and under Section 151 of C.P.C., for appointment of an Advocate Commissioner along with the Taluk Head Surveyor of R.K.Pet, R.K.Pet Taluk, for the purpose of inspection, to measure the petition schedule mentioned property, to fix the boundaries of the petition schedule mentioned property, to note down the physical features and to file their report with plan or sketch before this Court.

3. The case of the petitioner / plaintiff is that he purchased the suit property from their lawful vendors and is in the absolute possession and enjoyment of the suit property. It is also the case that the petitioner is having perfect right, title, interest, possession and enjoyment over the suit property by way of adverse possession and the respondents are not entitled to interfere with the possession and enjoyment of the suit property. It seems

that the respondents are trying to interfere with the petitioner's peaceful possession and enjoyment of the suit property.

4. The suit was filed for the relief of permanent injunction, against the defendants, restraining them, their men, followers, subordinates, servants, nominees, legal heirs and agents etc., from trespassing into or in any way interfering with the plaintiff's peaceful possession and enjoyment of their respective schedule of plaint schedule property.

5. It is submitted by the learned counsel for the petitioner that in view of the interference by the respondents with the possession and enjoyment of the suit property, the property has to be measured by an Advocate Commissioner with the help of Taluk Surveyor, then only, the property can be measured and boundaries can be fixed. It will also help in resolving the issue, without much of oral and documentary evidence. This petition was resisted by the respondents before the trial Court on the ground that this being the suit only for bare injunction, the petitioner has to prove his case by oral and documentary evidence, the appointment of Advocate

Commissioner, is not necessary in the facts and circumstances of the case. This petition was filed only for collecting the evidence and hence, the respondents pray for dismissal of the petition.

6. The learned District Munsif cum Judicial Magistrate, Pallipattu, considering the rival submissions, dismissed the petition stating that, the petitioner has to prove his possession over the suit property through documentary and oral evidence and he cannot seek appointment of Advocate Commissioner for collecting the evidence. Against the said order, this Civil Revision Petition is filed.

7. The learned counsel for the petitioner submitted that, there is a boundary dispute between both the parties. The inspection by the Advocate Commissioner with the help of Taluk Surveyor to inspect the suit property, to measure the property, to identify the suit property is absolutely necessary. It would help in resolving the issue, without much of oral and documentary evidence. He further submitted that it is not a case of collection of evidence. But it is a case of assisting the Court in resolving the

issue and deciding the issue between the parties, comprehensively and conclusively.

8. In response to the submissions, the learned counsel for the respondents 5 and 7 submitted that the petitioner made contradictory claim with regard to his title to the suit property. In paragraph no.6 of the plaint, it is alleged that the petitioner purchased the suit property from its lawful vendors. In the same para, it is again said that the petitioner has perfected the title to the suit property by adverse possession. This is a contradictory plea with regard to the title to the property. When the petitioner claims that he acquire title to the property by adverse possession, it amounts to admitting the title of the respondents in the suit property. Then he should have filed a comprehensive suit for declaration of title and for necessary consequential relief. Having filed a bare suit for injunction simplicitor, he cannot now seek appointment of Advocate Commissioner to collect evidence. In this regard, he had also brought to the notice of this Court the schedule of the property given in the plaint to show that the boundaries are not mentioned in the schedule of property and it clearly

shows that this petition is filed only for collection of evidence and that, is not permissible in law.

9. It is seen from the rival submissions that, as rightly pointed out by the learned counsel for the respondents that the petitioner claims title in the suit property through purchase and then, he also made a claim to the suit property by way of adverse title. But the suit was filed only for the relief of permanent injunction. There is no boundary details given in respect of the suit property. In a suit for permanent injunction, the Court is required to consider as to whether the plaintiff was in possession and enjoyment of the suit property on the date of filing of the suit and not more than that. The possession and enjoyment of the suit property can only be proved by oral and documentary evidence. The appointment of Advocate Commissioner is not necessary to prove the possession and enjoyment of the property by parties to the suit. It is apparent that the present petition for appointment of Advocate Commissioner to inspect the suit property with the help of a Surveyor to fix the boundaries is filed only to identify the suit property, which amounts to collection of evidence and impermissible in law.

10. In the light of the facts of the case, this Court is of the considered view that the trial Court has rightly dismissed the petition stating that the petitioner has to prove his possession in respect of the suit property through his documents of title and documents to show his possession. This Court finds no reason to interfere with the finding of the learned District Munsif cum Judicial Magistrate, Pallipattu and the order is confirmed.

11. Resultantly, this Civil Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

06.08.2021

Speaking order / Non-speaking order

Index : Yes / No

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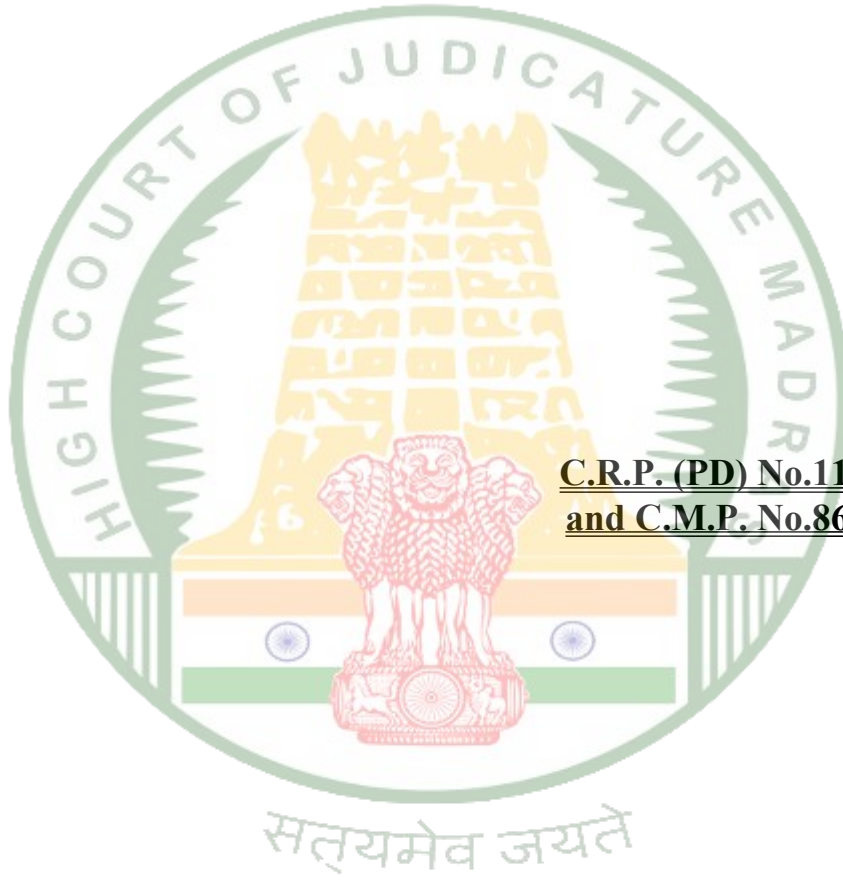
To

The District Munsif cum Judicial Magistrate,
Pallipattu.

7/8

G.CHANDRASEKHARAN, J.

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