



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.4822 of 2015
and M.P.No.1 of 2015

Kanna Goundar

.. Petitioner

Vs.

- 1.Vellaiya Gounder (died)
- 2.Malliga
- 3.Gunasekaran
- 4.Kumari
- 5.Chinnapattu
- 6.Vimala
- 7.Banu

.. Respondents

(RR2 to 7 brought on record as legal heirs of the deceased sole respondent vide Court order dated 23.03.2021 in CMP.Nos.3028 & 3029 of 2021 in CRP.PD.No.4822 of 2015 made by GKIJ)

Prayer: This Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair and decreetal order dated 27.10.2015 made in I.A.No.782 of 2015 in O.S.No.34 of 2012 on the file of the Principal District Munsif Court, Gingee.



For Petitioners : Mr.B.Jawahar

For Respondents : Mr.T.Dhanasekaran for R3 to R7
R2-Not ready in notice

ORDER

This Civil Revision Petition is filed against the fair and decreetal order dated 27.10.2015 made in I.A.No.782 of 2015 in O.S.No.34 of 2012 on the file of the Principal District Munsif Court, Gingee.

2.Heard learned counsel appearing for the petitioner and learned counsel appearing for the respondents 3 to 7 and perused the entire materials on record.

3.The petitioner is the defendant and 1st respondent is the plaintiff in O.S.No.34 of 2012 on the file of the Principal District Munsif Court, Gingee. The 1st respondent filed the said suit against the petitioner for permanent injunction. The petitioner filed written statement on 28.06.2012 and denied all the averments in the plaint. The 1st respondent filed I.A.No.782 of 2015 under Order XXVI Rule 9 of C.P.C., for appointment of Advocate Commissioner to measure the properties of the 1st respondent and the



petitioner with the help of Surveyor and to file a report along with the plan.

According to the 1st respondent, the boundaries mentioned in the suit schedule property were typed as per the details given in the sale deed dated 25.10.1985, purchased by the 1st respondent from one Sathappan. The petitioner filed written statement and stated that boundaries mentioned by the 1st respondent are not correct. Hence, the 1st respondent filed an application for amendment of boundaries. The 1st respondent purchased the suit properties in the year 1985 from one Sathappan and the petitioner purchased the properties in the year 1986 from the vendor of the 1st respondent. In the northern side of the suit property, the 1st respondent is having his lands. There are boundary stones in respect of the property of the 1st respondent and the petitioner and there is a stream running in between both the properties. The petitioner is having one acre of his land. The suit property lies on the southern side of the stream also. Further, the owner of the western boundaries, Kasiammal sold her property to one Panchammal. Only when the persons who are enjoying the property on the side of the suit properties are mentioned, the issue can be decided properly and prayed for an appointment of Advocate Commissioner to measure the suit property.



WEB COPY

4.The petitioner filed counter affidavit and denied all the averments and submitted that the 1st respondent has filed suit for permanent injunction and that he is trying to collect evidence by appointment of Advocate Commissioner. He has to prove his possession by letting in oral and documentary evidence. The application filed by the 1st respondent is only to encroach the petitioner's property and prayed for dismissal of the I.A.

5.The learned Judge considering the averments made in the affidavit and counter affidavit, allowed I.A.No.782 of 2015 holding that averments mentioned by the 1st respondent that there is a boundary stone and stream, report of the Advocate Commissioner will assist the Court to decide the issue and in the interest of justice, to give an opportunity to both the parties to prove their case.

6.Against the said order dated 27.10.2015 made in I.A.No.782 of 2015, the petitioner has come out with the present Civil Revision Petition.



WEB COPY

7. Pending Civil Revision Petition, the 1st respondent died and legal heirs of the deceased 1st respondent were impleaded as respondents 2 to 7 vide order of this Court dated 23.03.2021 in C.M.P.Nos.3028 & 3029 of 2021 in C.R.P.PD.No.4822 of 2015.

8. From the materials available on record, it is seen that the 1st respondent has filed the suit for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the property mentioned in the plaint schedule. According to the 1st respondent, the schedule in the plaint was typed by the typist of his earlier counsel as per the schedule mentioned in the sale deed dated 25.10.1985 through which, the 1st respondent has purchased the suit property. Subsequent to purchase, one of the owner of the property on the western side sold the property. The petitioner is denying the purchase of the property by the 1st respondent and also stated that there is no property measuring to an extent of 40 cents owned by father of the 1st respondent. From the averments in the counter affidavit as well as the contention of the learned counsel, it is seen that the petitioner is disputing the existence of property owned by the 1st respondent. According to the 1st respondent, he and the petitioner purchased the property from the same



vendor Sathappan and boundary stones are there in the property and there is a stream running in between both the properties. The learned Judge considering the averments made by the 1st respondent in the affidavit and denial by the petitioner, allowed the I.A by appointing an Advocate Commissioner holding that report of the Advocate Commissioner will assist the Court and decide the issue. The learned Judge in order to give an opportunity to both the parties, in the interest of justice, allowed I.A.No.782 of 2015 in O.S.No.34 of 2012. There is no error or irregularity in the said order of the learned Judge warranting interference by this Court.

9.For the above reasons, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.11.2021

vkf

Index : Yes / No
Internet : Yes / No

To

The Principal District Munsif Judge,
Gingee.



WEB COPY



C.R.P. (PD) .No.4822 of 2015

V.M.VELUMANI, J.

vkr

C.R.P.(PD).No.4822 of 2015
and M.P.No.1 of 2015

30.11.2021