



CRP.(PD).No.764/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.(PD).No.764/2019 and CMP.No.5056/2019

[Video Conferencing]

Paramasivam

.. Respondent/Plaintiff /
Petitioner

Vs.

1.Kuppammal
2.Manikandan
3.Muthammal
4.Manjula

.. Petitioners 1 to 4/
Defendants 1 to 4
Respondents

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal orders dated 03.01.2019 passed in I.A.No.95/2018 in O.S.No.116/2013 on the file of the District Munsif Court, Chengam.

For Petitioner : Mr.P.Mani
for Mr.M.Tamil
Thendral Arasu

For Respondents : No appearance



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ORDER

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- (1) This Civil Revision Petition is directed against the order dated 03.01.2019 passed in I.A.No.95/2018 in O.S.No.116/2013 on the file of the District Munsif Court, Chengam.
- (2) Brief facts that are necessary for disposal of this Civil Revision Petition are as follows:
- (3) The revision petitioner is the plaintiff in the Suit in O.S.No.116/2013 on the file of the District Munsif Court, Chengam.
- (4) The said Suit was filed for declaration of title and consequential permanent injunction in respect of the Suit property. The case of the plaintiff in the Plaint is that the plaintiff is entitled to an extent of 26 cents in S.No.53/5 and another extent of 40 cents in S.No.53/1 out of an extent of 1.03 Acres. However, the property in S.No.53/5 is not described with reference to boundaries. Though the Suit is filed for an extent of 66 cents, it is admitted that UDR patta given to the plaintiff was only for a lesser extent, and still the plaintiff has filed the Suit for declaration of his title to an extent of 66 cents comprised in two S.Nos.53/5 and 53/1. It is stated by the



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plaintiff that the defendants are the legal heirs of one Duraisamy Naidu, son of one Chinnasamy Naidu. It is further stated that Chinnasamy Naidu purchased only to an extent of 63 cents and that his son Duraisamy Naidu obtained patta for an extent of 71 cents and falsely claim right to the excess extent without being in possession.

- (5) A Written Statement was filed by the 1st defendant specifically stating that the property comprised in S.No.53/1 belong to one Lakshminarayanan Chettiyar and his brother Gopalakrishnan Chettiyar. It is also stated that the first defendant's father in law by name Chinnasamy Naidu purchased 64 cents out of an extent of 1.03 in S.No.53/1 for a valuable consideration under registered Sale Deed dated 05.03.1964.
- (6) It is further stated that the property was described in the Sale Deed with the reference to specific boundaries. It is contended that the recitals in the Sale Deed dated 05.03.1964, though states that an extent of 64 cents was conveyed, the actual extent within the boundary is 71 cents. Therefore, it is stated that Chinnasamy Naidu was in possession and enjoyment of 71 cents from the date of



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purchase. It is further, stated that the plaintiff 's father purchased the property under a subsequent Sale Deed dated 20.11.1974 and that the plaintiff is in possession and enjoyment of the property as per the boundary description in the Sale Deed.

- (7) After filing the Written Statement, the defendants filed an Interlocutory Application in I.A.No.95/2018 for appointment of an Advocate Commissioner to inspect the Suit property with the assistance of the surveyor to measure S.No.53/1A and S.No.53/1B and to note down the existence of permanent boundaries and other physical features and to submit a Report along with the plan. The application was contested by the revision petitioner on many grounds. One of the main objections was regarding the request to measure the lands as per the sub division.
- (8) It is further stated that the defendants cannot be permitted to seek appointment of an Advocate Commissioner after the commencement of the trial. Stating that witnesses have been examined on the side of parties, it is contended that the application for appointment of an Advocate Commissioner is highly belated and to protract the proceedings.



(11) Since, the Suit itself filed on the ground that the problem was due to wrong measurements given in the UDR patta and a specific prayer for mandatory injunction has been sought for to direct the



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Revenue Authorities to correct the wrong measurements given in the UDR patta, it is submitted by the counsel that the Lower Court ought to have seen that the Commissioner's Report is not necessary as it is not going to help the parties.

- (12) It is also stated that the parties should establish their case on the basis of documentary evidence without the aid of the Advocate commissioner as the appointment of Advocate Commissioner cannot be filed to collect evidence. Learned counsel also submitted that the Commissioner may also be directed to measure the properties of both plaintiff and defendants on the basis of the Title Deeds relied upon by them.
- (13) This Court is unable to appreciate all the contentions of the learned counsel appearing for the revision petitioner. Though, the application for the appointment of an Advocate Commissioner was filed belatedly, this Court is unable to sustain the plea by the revision petitioner that the application cannot be entertained. Merely because the application is filed at the belated stage, unless it is shown that the revision petitioner is put to any hardship or serious prejudice because of the appointment of Advocate



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Commissioner at a belated stage, the application cannot be dismissed without considering the merits.

- (14) The Suit filed by the revision petitioner is for declaration of his title on the basis of Sale Deeds. The Suit is also for permanent injunction. The defendants have filed the application to note the physical features of the Suit property so that the permanent ridges available on ground may indicate that the property as per enjoyment is demarcated on ground. It is not for the Commissioner to find out whether the defendants or the plaintiff is in possession. The contention of defendants appears to be on the basis that boundary will prevail over extent.
- (15) The request of the learned counsel appearing for the petitioner that Commissioner should be directed to measure the property as per the Title Deed of parties cannot be entertained. The defendants have taken a specific stand that the document of Sale Deed relied upon by them though refers to 64 cents, they are entitled to the property within the four boundaries mentioned in the documents and that the extent of property lying within the boundary is 71 cents.



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(16) The learned counsel appearing for the petitioner failed to consider the pleadings of respective parties before developing the argument that the Commissioner application is not necessary. As pointed out earlier, having regard to the issues that arise for consideration, this Court is of the view that the Report of an Advocate Commissioner will be of some assistance to resolve the dispute between the parties, if the Commissioner is properly directed. Since, the object of appointment of an Advocate Commissioner is to obtain evidence and to reduce the burden of Court to some extent, this Court is in agreement with the Lower Court in allowing the application for appointment of an Advocate Commissioner to note down the physical features.

(17) However, the Lower Court has given direction to the Advocate Commissioner to find out the property of defendants measuring an extent of 0.29.0 hectares in S.No.53/1A and the property of the plaintiff measuring an extent of 0.23.0 hectares in S.No.53/1B with the help of Surveyor and to note down the permanent ridge in between the two properties and other natural physical features. By this direction, the Lower Court has accepted the case of defendants



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even before trial. This is not proper especially when the subdivision is not admitted and the UDR patta is challenged by the revision petitioner.

(18) Therefore, this Court is inclined to dispose of the revision in the following lines:

(a) The Civil Revision Petition is partly allowed.

While confirming the order appointing Advocate Commissioner, the direction issued by the Lower Court to the Advocate Commissioner is set aside.

(b) The Advocate Commissioner shall inspect the suit property described in the plaint along with the Surveyor and to note down the physical features and measurements to find out [1]whether any permanent ridges available in S.No.53/1 ; [2]whether the property within the permanent ridges noted by the Advocate Commissioner fits the subdivision done by the Revenue Department ; and [3]to mention any



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other physical features which are required to be noted by the Advocate Commissioner at the request of parties or on his own if the Commissioner deems it fit, having regard to the nature of dispute.

- (19) Accordingly, the Civil Revision Petition is disposed of with medications and directions as indicated above. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.12.2021

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Internet : Yes

To

1.The District Munsif Court, Chengam.



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S.S.SUNDAR, J.,

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