

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.03.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.637 of 2021 &
C.M.P.No.5448 of 2021

Dhanalakshmi

... Petitioner/Plaintiff

Vs.

1. Kumaresan
2. Nasathram
3. Dhanalakshmi
4. Rani
5. Lakshmi

.... Respondents/Defendants

Civil Revision Petition is filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 19.02.2020 made in I.A.No.1 of 2019 in O.S.No.363 of 2015 on the file of III Additional District Munsif, Salem.

For Petitioner : Mr.S.P.Yuaraj

O R D E R

The present Civil Revision Petition has been filed under Article 227 of Constitution of India to set aside the fair and decreetal order dated 19.02.2020 made in I.A.No.1 of 2019 in O.S.No.363 of 2015 on the file of learned III Additional District Munsif, Salem.

2. Originally, the petitioner, as a plaintiff has filed a suit for injunction and later on, she has filed an application for amending the said prayer and as per the orders of the court below, the same was amended to declare the plaintiff is an absolute owner and title of the suit property and by restraining the respondents / defendants and their men from disturbing the peaceful possession and enjoyment of suit properties detailed in two items in the description of the property by an order of permanent injunction.

3. The petitioner submits that she is the owner of the property in Patta No.441 of 1995, two properties by virtue of her possession and enjoyment, the Government has issued the Natham Patta on 29.06.1995 in Maramangalathupatti village. The

defendants having no right in the suit property had attempted to disturb the plaintiff's possession and enjoyment of the suit property, hence she filed a suit for permanent injunction against the defendants, later on, she altered the prayer of the suit to that of Declaration by way of seeking an amendment on the ground that the defendants had disputed the title over the suit properties.

4. The suit schedule property, viz., 1st item, is Maramangalathupatti Village, Old Survey No.108/2N having new survey no.165/25 a vacant house site having extent of 0.0126.0 sq. Meter, Ryotwari Natham Patta No.441 with all right of easement thereon and the 2nd item is, Maramangalathupatti Village, Old Survey No.108/2, 'O' having new survey No.165/34, a house site with basement having extent of 0.0138.0 sq. meter, Ryotwari Natham Patta No.441 with all right of easement therein and the suit properties 1 and 2 are bounded by North- Sivamani Land of Survey No.165/33; South by - High ways road of S.No.111; East by - Natham Road in S.No.165/35; West by - Rangasamy land of Survey no.165/24.

5. A written statement was filed by the 1st and 2nd defendants denying all the averments stating that the alleged patta has no sanctity in the eyes of law and the same was created by the plaintiff's husband, who is the Village Administrative Officer. The plaintiff's predecessor occupied the suit schedule property based on possession and enjoyment and the same has to be proved by the plaintiff. The defendants further submitted that they purchased the property by way of sale deed dated 05.09.2005. One Ramasamy and his family members had plotted out the lay out and the same was approved by the Government of Tamilnadu, Local planning authority no.90/1987 and in pursuance of the said approval by the Deputy Director, Salem Country and Town Planning, the same has been named as "Ganapathy Nagar" and the respondents herein had purchased the same by way of a registered sale deed from one Amirthalingam dated 05.09.2005 and enjoying the same. Due to name transfer of patta made by the revenue authorities, the 2nd defendant's name was also included on 28.02.2009. The defendants are in possession of the said property. Further, the plaintiff has neither title nor in possession of the suit property, hence it is not maintainable and prayed for dismissal of the same.

6. In the meanwhile, the petitioner had filed I.A.No.779 of 2016 in O.S.No.363 of 2015 to appoint an advocate commissioner to inspect the suit property, note down the physical features of the suit property by measuring the suit property with the help of qualified surveyor and to file his report. The said I.A. was dismissed by the learned District Munsif, Salem on 03.2.2016, aggrieved by the said order, the petitioner herein filed C.R.P.

No.1278 of 2017 before this Court and this Court by an order dated 06.04.2017 had dismissed the said Revision Petition stating that the petitioner HAD filed a suit for bare injunction to get the relief sought for in the application and to get the relief sought for in I.A.No.779 of 2016, it is for the petitioner to prove the possession and enjoyment of the suit property by letting in oral and documentary evidence, therefore, there is no illegality in the order passed by the court below warranting interference and dismissed the same.

7. Later on, the petitioner herein filed a petition for amending the prayer and the plaint was subsequently amended, the said action was carried out in the year 2017. Thereafter, in the year 2019, the petitioner, again, filed I.A.No.1 of 2019 to appoint an advocate commissioner to measure the suit property with the help of qualified surveyor to file a report with plan drawn to scale and note down the physical features under Order 26 Rule 9 & Section 151 of CPC. The contention in the said application is that this Court had accepted the petitioner's contention in C.R.P. No.1278 of 2017 holding that the suit is only for bare injunction and not for declaration and the petitioner has filed an application for declaration of the suit property and the same was allowed, now, the petitioner has filed I.A.No.1 of 2019, seeking appointment of Advocate Commissioner. Since the respondents / defendants had disputed the ownership and title over the suit schedule property, it is to be ascertained based on revenue records by means of measuring a suit property through a commission, which is highly warranted and necessary one in order to minimise the volume of oral evidence.

8. On the other hand, a counter was filed by the respondents / defendants stating that the dispute of title and ownership are to be decided by this Court and the warrant of commission is an unnecessary one and there is no boundary and measurement disputes, hence the warrant of commission, sought by the petitioner need not be allowed. The learned 3rd Additional District Munsif, Salem, in I.A.No.1 of 2019 has passed the order on 19.02.2020 dismissing the said application, which is correct in the eye of law and sought to affirm the said order.

9. Aggrieved against the order passed in I.A.No.1 of 2019 dated 19.02.2020, the petitioner has filed the present Revision Petition stating that the court below has passed unreasoned order and a cryptic order and such appointment of commissioner cannot be just like that dismissed. It is also contended that the earlier petition filed by the petitioner under Order 26 Rule 9 of CPC was dismissed by the court on the ground that in the suit seeking for bare injunction, appointment of commissioner cannot be granted. Hence the Revision Petition in CRP.No.1278 of

2017 was dismissed stating that the petitioner cannot seek for appointment of advocate commissioner in the bare injunction suit. Thereafter, the petitioner filed an application for amending the prayer in the suit for declaration and the petition was allowed. Only after amending the prayer in the suit, the petitioner has filed the present application, but the court below has erroneously dismissed. Therefore seeks to set aside the order passed by the court below and to allow the present petition.

10. Heard the learned counsel for the petitioner and perused the documents placed on record.

11. According to the plaint and written statement, it is seen that with regard to the 2nd item of the suit schedule property, the defendants have denied the title on the property. It is also noticed that at earlier point of time, the suit was filed only for bare injunction and later on, when the petitioner filed an application for appointment of advocate commissioner and the same was dismissed, thereafter, the petitioner filed a C.R.P. No.1278 of 2017 before this Court and in the said order, this Court has observed that the suit is only for bare injunction and the petitioner has no locus standi to file a petition for appointment of advocate commissioner and after dismissal of the same, the petitioner filed an application for amendment of plaint and prayer of declaration was included.

12. On going through the averments and counter averments it is seen that the court below had come to the conclusion that there was no boundary dispute anywhere in the plaint or in the written statement and the dispute is only with regard to the ownership of suit schedule property and accordingly, exhibits have been filed by the parties concerned. It is no doubt true that the said Ganapathy Nagar is the approved layout and as per the approved lay out, the division has been done only by dividing with appropriate measurement and accordingly, there cannot be any dispute with regard to specific boundaries, that being the case, when the said layout has been properly measured, divided and sold to the parties by the said authorities, the Advocate Commissioner need not be appointed. Accordingly, the court below has rightly dismissed the application seeking appointment of advocate commissioner.

13. On perusal of the documents filed in the typed set of papers, it is seen that with regard to the suit schedule properties, the Government has issued the Natham Patta in Patta No.441 of 1995 and the same was approved by the Government of Tamilnadu, Local planning Authority no.90/1987 and in pursuance of the said approval by the Deputy Director, Salem Country and Town Planning, the same has been named as "Ganapathy Nagar". It

is also clear that the said property has been dividied as per proper approved layout. Accordingly, possession has to be proved only by letting in oral and documentary evidence and the petitioner cannot seek an appointment of an advocate commissioner to measure and to prove the possession of the property. The appointment of advocate commissioner is not a valid claim. As the petitioner had filed a suit for declaration, it is for the petitioner / plaintiff to prove the same by letting in oral and documentary evidence and she cannot seek appointment of advocate commissioner to prove the same.

14. Moreover, the appointment of Advocate Commissioner is between the Court and the parties and the Court has to see whether the appointment of advocate commissioner is necessary to the case or not. In the present case, as it is being an approved lay out, there are well marked portions, which were sold to the parties, that too after prior and proper approval by the Government. That being the case, the measurements will be properly shown in the schedule of sale deeds on the date of purchase itself and the claim made by the petitioner is, as per Natham Patta and whether the petitioner has got any title through the same, has to be proved by her by way of letting in oral and documentary evidence. She cannot seek for an appointment of advocate commissioner to collect evidence regarding who is in possession of Item No.2 suit schedule property and the same is hereby rejected.

In view of the above, this Court is not inclined to interfere with the order passed by the court below and hence the present Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The III Additional District Munsif,
Salem.

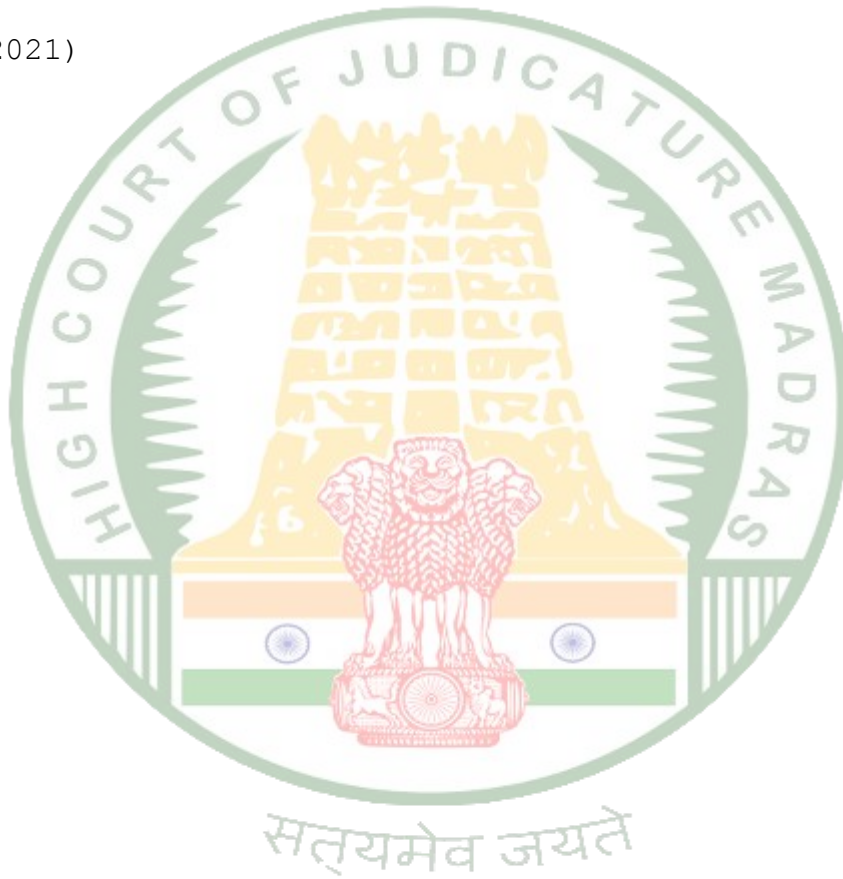
WEB COPY

2. The Section Officer,
V.R.Section,
High Court, Madras

+1cc to M/s.SP.Yuaraj, Advocate, S.R.No.19503

C.R.P.No.637 of 2021 &
C.M.P.No.5448 of 2021

CP (CO)
KM(30/04/2021)



WEB COPY