

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.4.2021.

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD) No.610 of 2021

and

C.M.P.No.5258 of 2021

1. Minnalammal
2. A.Bhaskar
3. A.Murali
4. A.Babu
5. Mrs.S.Shanthi

Petitioners

vs.

S.Angamuthu

Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decreetal order dated 8.2.2021 passed in I.A.No.3 of 2019 in O.S.No.299 of 2019 on the file of the IV Additional District Judge, Ponneri.

For Petitioners : Mr.E.Prabu

For Respondents : Mr.V.Rajasekar

ORDER

The revision petition has been filed by the defendants in O.S.No.299 of 2019 now pending on the file of the learned IV Additional District Judge dated 8.2.2021 passed in I.A.No.3 of 2019.

2. The said Interlocutory Application had been filed by the plaintiff seeking for appointment of Advocate Commissioner. It must be pointed out that the said Application has been filed seeking an omnibus prayer for appointment of Advocate Commissioner to determine the physical features of the property and also report about possession and also about the usage of the property, which aspects cannot be or should not be assigned to the Advocate Commissioner to determine. The burden of determining possession or establishing possession or establishing the nature of usage during the course of possession lies entirely with the plaintiff, who asserts possession or on the party, who asserts possession.

3. A little more details of facts are required to decide the present revision.

4. Originally, the Suit in O.S.No.116 of 2018 came to be filed in the Sub Court, Ponneri. This suit was filed by five plaintiffs against one Angamuthu seeking a judgment and decree against the said defendant from interfering with item 2 of plaint schedule of properties and with the plaintiffs' possession and enjoyment of the same. In the schedule of property therein, suit item 1 was given as Survey No.519/1A measuring 0.45 cents. This property is situated in Vallur

Village, Ponneri Taluk, Thiruvallur District. The suit item 2 is the southern portion measuring 0.22 cents which has been subdivided as Survey No.519/1A2. It is claimed by the plaintiff that protection from disturbance with the possession should be granted with respect to the said 0.22 cents of land which, according to the plaintiff, is a part of Survey No.519/1A, but, had been wrongly subdivided as Survey No.519/1A2. That suit is pending. An order of injunction has already been granted by the learned Sub Judge, Ponneri.

5. Subsequent to the institution of the suit, the defendant therein viz., Angamuthu filed O.S.No.299 of 2019, which is now pending on the file of the IV Additional District Judge, Ponneri, seeking declaration of title and also permanent injunction restraining the defendants therein/ plaintiffs in O.S.No.116 of 2018 from interfering with possession. The suit schedule property in the said suit had been given as 22 cents which had been mentioned as item 2 in Survey No.519/1A2 in O.S.No.116 of 2018.

6. The plaintiffs in O.S.No.116 of 2018 claim title to the said property. That claim for title is disputed by the defendants. It may not be proper on my part to examine the merits of the rival claims with respect to the title or even with respect to possession since these are

aspects to be decided on the basis of documents and oral evidence to be adduced by the respective parties. I am confident that opportunity would be given by the learned Judges before whom the two Suits are pending.

7. In O.S.No.299 of 2018 as aforesaid, the plaintiff had filed I.A. No.3 of 2019 seeking appointment of Advocate Commissioner with various tasks to be assigned to the Advocate Commissioner including reporting on possession. The learned Judge, in the course of his order, had also observed that Survey No.519/1A has been subdivided as Survey No.519/1A2 and in the course of his orders, stated that the defendants in the said suit/plaintiffs in O.S.No.116 of 2018 have questioned such sub-division and also challenged the said sub-division. It is claimed that such sub-division was done behind their back. That again is a matter to be determined only on the basis of evidence to be adduced.

8. As a fact, the property had been sub-divided in the revenue records. The learned Judge has stated that appointment of Advocate Commissioner would be required to ascertain whether the sub-division was made properly by the revenue authorities on the basis of records and sale deed pertaining to the suit property. Once again, in para 10 of

the order, the learned Judge had stated that the scope of the Advocate Commissioner would be only to note down the physical features and measurements of the suit property relating to the sub-division of the property on the basis of material records available with the Tahsildar and Taluk Head Surveyor. Whether such sub-division was done in accordance with proper procedure or not is for the court to determine on the basis of evidence.

9. The burden of establishing the same lies very heavily on the defendants in O.S.No.299 of 2019/ plaintiffs in O.S.No.116 of 2018 since it is their case that the property had been wrongly sub-divided. The Advocate Commissioner can never return a finding that sub-division has been wrongly given or that it has been done on the basis of the records available with the Tahsildar or with the Taluk Head Surveyor. Those records have to be naturally summoned, examined and then it has to be determined as to whether Survey No.519/1A had been wrongly subdivided as Survey No.519/1A2 and thereafter, if an issue with respect to wrongful sub-division is framed, the particular issue has to be decided after giving opportunity to the parties to plead on the same and also adduce evidence on the same.

10. If there is a dispute about the very identity of the property,

then, an Advocate Commissioner can be appointed viz., if a pleading is raised that on record there is a land with Survey No.519/1A2 measuring 0.22 cents, but, at the ground level, such property cannot be identified, then, an Advocate Commissioner can be appointed. But here, that is not the case. The plaintiffs admit that defendants in O.S.No.299 of 2019 had wrongfully taken possession of 0.22 cents in S.No.519/1A2. Whether the defendants have wrongfully took possession or not, and whether the plaintiff in O.S.No.299 of 2019 is entitled to declaration of title are subject matters of evidence. Whether Survey No.519/1A2 is actually a part of Survey No.519/1A is also a matter of evidence. These are all aspects which the learned Judge should take up the responsibility of giving a finding on the basis of available evidence before the court. He cannot shift that burden on the Advocate Commissioner merely because there is a provision for appointment of Advocate Commissioner.

11. The plaintiff in O.S.No.299 of 2019 may come forward to adduce evidence to establish the documents with respect to title, revenue records and with respect to sub-division of Survey No.519/1A into Survey No.519/1A2 measuring 0.22 cents. In fact, the 0.45 cents in Survey No.519/1A includes 0.22 cents in Survey No.519/1A2. The

burden to establish title to the same rests very heavily on the plaintiff in O.S.No.299 of 2019 and that the sub-division was wrongly done is the next burden to be discharged by the plaintiffs in O.S.No.116 of 2018.

12. This evidence will have to be spoken to by the parties to the suit. The revenue officials may be additionally summoned and documents from the revenue authorities be put forth as evidence. Let the parties adduce evidence and subject themselves to cross examination and then, let the learned Judge give a decision on the basis of the evidence recorded both oral and documentary.

13. The requirement of an Advocate Commissioner does not arise at this particular point of time. It must also be noted that the plaintiff in O.S.No.299 of 2019 has not sought for any relief of recovery of possession. Therefore, there is no dispute with respect to identity of the property, and it is clear that both the parties are disputing only with respect to 0.22 in Survey No.519/1A2. Let the evidence be recorded with respect to the issues framed and judgment be delivered. Let the plaintiff take her own stand. Let the defendants take their own stand. Let the Judge analyse the evidence and return a finding on the issues.

14. With the said observations, holding that the order under revision requires interference, it is set aside. Let full opportunity be given to the plaintiff and the defendants to adduce constructive oral and documentary evidence and I am confident that opportunity will also be given by the learned Principal District Judge, Thiruvallur and also by the Sub Judge, Ponneri. The revision petition is, accordingly, allowed. No order as to costs. The connected Miscellaneous Petition is closed.

27.4.2021.

Index: Yes.
Internet: Yes.
ssk.

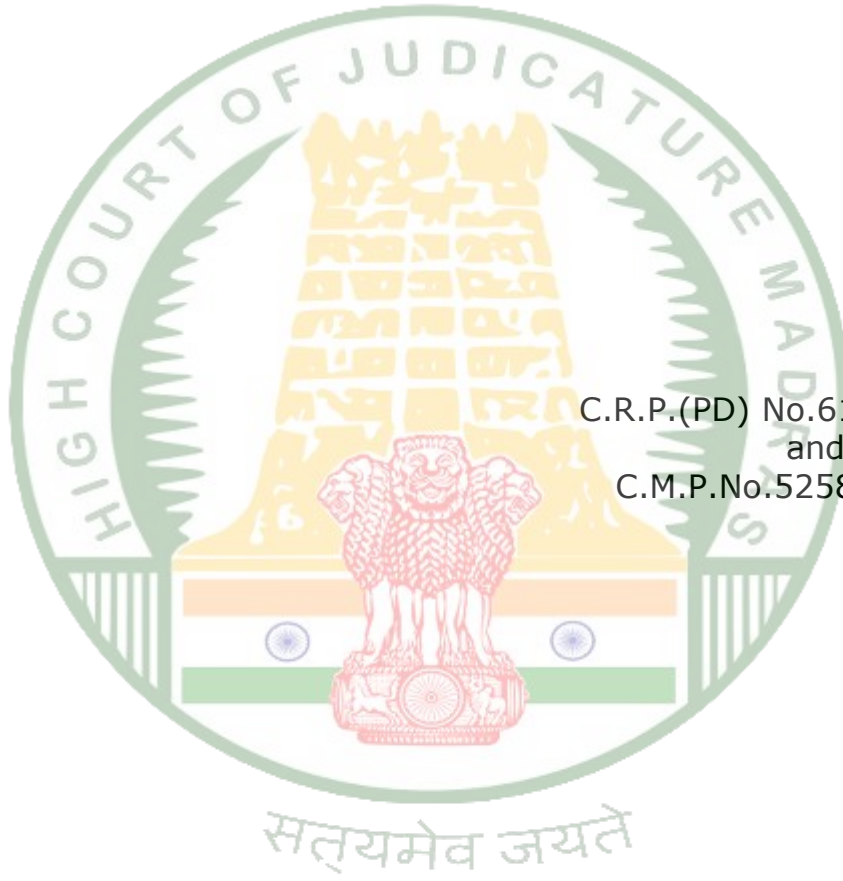
To

IV Additional District Judge,
Ponneri.

सत्यमेव जयते
WEB COPY

C.V.KARTHIKEYAN, J.

Ssk.



C.R.P.(PD) No.610 of 2021
and
C.M.P.No.5258 of 2021

WEB COPY 27.4.2021.