

C.R.P.(PD) No.635 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2021

C O R A M

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.(PD) No.635 of 2021
and
C.M.P. No. 5440 of 2021

Malaiappan,

... Petitioner

Vs.

Rajendran

... Respondent

Prayer: This Civil Revision Petition filed under Article 227 of the Constitution of India praying for to set aside the fair and decretal order passed by the District Munsif Court, at Thiruthuraipoondi in I.A. No.40 of 2020 in O.S. No.88 of 2016 dated 12.02.2021.

For Petitioner ... Mr. M. Jaikumar

For Respondents ... No Appearance

ORDER

This Civil Revision Petition under Article 227 of the Constitution of India has been filed praying for to set aside the fair and decreetal order dated 12.02.2021 passed in I.A.No.40 of 2020 in O.S. No.88 of 2016 on the file of the District Munsif Court, Thiruthuraipoondi.

2. The case of the petitioner is that the petitioner herein is the plaintiff who had filed a suit for permanent injunction stating that his father Balakrishnan was in absolute possession and enjoyment of the suit property bearing S.No.161/19 to the extent of 0.00.84 square meter and S.No.161/1G 1A to the extent of 0.02 cents for 50 years. After the death of his father, the plaintiff/petitioner herein is in absolute possession as legal heir and he had obtained patta in his favour. The plaintiff/petitioner herein had constructed house with RCC roof to the extent of 65 feet on the eastern side length and 11 feet breadth and the plaintiff is using lane to the extent of 5 feet x 4 1/2 feet at East West direction. The property of the defendant/respondent herein situates at Northern side of the lane. The defendant/respondent herein has no right over the suit property belonged to the petitioner herein. The plaintiff/petitioner herein was

constructing house and when he is constructing ventilator in the house, the defendant/respondent herein objected the same. Hence, the plaintiff/petitioner herein had filed the suit in O.S. No.88 of 2016 on the file of the District Munsiff Court, Thiruthuraipoondi, seeking for permanent injunction against the defendant/respondent herein. The defendant/respondent herein had filed a written statement denying all the averments made in the plaint and stated that the said suit schedule lane belongs to the defendant/respondent herein and was in possession and enjoyment of the same. Hence, the plaintiff/petitioner cannot erect a sunshade in the suit property and in the survey No.161/19 an extent of 52 square meter belongs to the defendant/respondent herein. As per the patta No.740, it is a joint patta in which the respondent name was also found in the joint patta in survey No.161/19. Accordingly, the plaintiff/petitioner herein has got no right over the said property and prayed for the dismissal of the same. After filing of the written statement, the plaintiff/petitioner herein filed an interlocutory application in I.A.No.40 of 2020 to appoint an advocate commissioner to survey the entire suit property with the help of the surveyor and to identify the boundary and to give report with details of the boundaries of the suit schedule property. A

counter was also filed by the defendant/respondent herein stating that when the defendant/respondent herein denied the ownership of the plaintiff/petitioner on the suit property lane, the plaintiff/petitioner herein cannot file an application for appointment of advocate commissioner to collect evidence and when there is no cause of action arises, the said application cannot be maintainable. Further, the plaintiff/petitioner cannot pray for fixing of four boundaries for the said suit property by appointment of advocate commissioner. Hence, it is prayed for dismissal of the said interlocutory application. The Court below after considering the arguments on both sides and averments in the application and counter, found that the petitioner cannot seek for appointment of the commissioner for fixing four boundaries of the said property and the advocate commissioner can be appointed only for noting down the physical features and the advocate commissioner cannot fix the boundary level. The Court below also held that in a suit for permanent injunction the petitioner has to prove his case only through oral and documentary evidence and he cannot seek for appointment of advocate commissioner to collect the evidence. Hence, the Court below dismissed the said interlocutory application. Against the aforesaid dismissal order, the

plaintiff/petitioner has filed the present civil revision petition to set aside the same.

3. The learned counsel appearing for the petitioner submitted that the Trial Court had observed that the plaintiff has to prove his case only through oral and documentary evidence and cannot seek appointment of advocate commissioner to survey the boundaries of the suit schedule property. However, since the defendant/respondent totally denied the claim of the plaintiff/petitioner herein in the written statement and disputed the existence of the suit property as stated in the plaint and rough sketch filed along with the plaint, it is necessary to appoint advocate commissioner.

4. He further submitted that the appointment of the advocate commissioner to survey the suit property in whole with the help of surveyor and to identify the boundary and to give report with details of the boundaries neither cause prejudice to the defendant/respondent herein nor amount to collection of evidence. When there is a quarrel regarding the nature, extent and features of the suit property, it is appropriate for

the Court below to appoint an advocate commissioner in this regard to note down the physical features of the suit property.

5. Heard the learned counsel appearing for the petitioner and perused the records available on record.

6. On a perusal of the records, it is clear that the plaintiff/petitioner herein is claiming right over the suit schedule property by way of absolute possession and enjoyment by his father for more than 50 years. It is also stated that the plaintiff/petitioner herein already constructed the house in the said suit property and he is now trying to put up sun-shade abutting the lane which was bought by the defendant/respondent herein and hence, he has no right over the suit schedule lane which is stated to be possessed and enjoyed by the defendant/respondent herein. If the plaintiff/petitioner herein has got valid title with regard to the suit schedule property, he has to prove his possession and enjoyment of the title to the suit property by letting oral and documentary evidence. Apart from that, he cannot seek for appointment of an advocate commissioner for collecting evidence in order to prove that whether the said lane was in

his possession or not. When all these matters are regarding the title of the suit schedule property and if the plaintiff/petitioner herein has sought right over the property, he has to prove the same by giving the details regarding the boundaries before the Court below to decide the issue in accordance with law. When the plaintiff/petitioner herein has not produced such documents to prove the boundaries, he cannot file an application before the Court below to appoint the advocate commissioner to fix four boundaries in the suit schedule property. Hence, this present civil revision petition is not maintainable and liable to be dismissed.

5. In the result, this Civil Revision petition stands dismissed. Consequently, connected miscellaneous petition is closed if any. There shall be no order as to costs.

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Lbm

Index: Yes/No.

Speaking/Non-Speaking order

Internet: Yes/No.

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V.BHAVANI SUBBAROYAN, J.,

lbm

To:

The District Munsif Court,
at Thiruthuraipoondi



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