



C.R.P. (PD) No. 1351 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **16.12.2021**

CORAM:

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

C.R.P. (PD) No.1351 of 2019
and C.M.P. No.8805 of 2019

1. Rani
2. R.Srikumar

...Petitioners

Versus

K.Sirangi

...Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the Civil Revision Petition by setting aside the fair and decreetal order dated 21.12.2018 passed in I.A. No.102 of 2017 in O.S. No.48 of 2016 on the file of the learned District Munsif Court, Udhagamandalam.

For Petitioners : Mr. S.Sabarish

For Respondent : Mr. T.Shanmugham

ORDER

This Civil Revision Petition is directed against the order in I.A. No.102 of 2017 in O.S. No.48 of 2016 passed by the District Munsif Court, Udagamandalam.



2. The revision petitioners are the defendants in the suit in O.S. No.48 of 2016 which was filed by the respondent plaintiff for permanent injunction restraining the revision petitioners from interfering with her peaceful possession and enjoyment of the suit property.

3. The suit was based on title and the patta granted to the father of the plaintiff in the year 1989. In the written statement, the defendants disputed the genuineness of patta. It is also stated that a construction was to be made in the property within one year as per condition and that therefore patta stands cancelled for violation of conditions. It is also stated that suit property does not tally with the boundaries shown in patta. During pendency of the suit, the revision petitioners filed an Interlocutory Application in I.A. No.102 of 2017 for appointment of Advocate Commissioner to find out the points detailed in the petition filed by the petitioner. In the petition, the petitioner wanted an Advocate Commissioner to note down the following aspects:

“ 1. To find out the physical features and the ground realities of the property covered under the patta dated 28.02.1989 with reference to the boundary given in the patta as per plaintiff's document No.1 and Filed Map Sketch in Old S.No.78/19 of Sholur Revenue Village.



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2. To find out whether the boundaries given in the patta is tallied with the boundaries given in the suit / petition schedule?

3. To find out the extent, boundaries and the physical features of the property in which the house bearing D.No.6/35B5 situated which is in the occupation of the defendants with reference to the survey sketch filed by the defendants.

4. To find out extent and the physical features of the property in which the cow shed was constructed (Now demolished).

5. To find out whether the property covered under the Patta dated 28.02.1989 and the property which is in the occupation of the defendants which is demarcated in the defendant's sketch are one and the same or not?

6. The Commissioner may be directed to execute the warrant with reference to the plaintiff's and the defendant's sketch along with F.M.B.”

4. In the affidavit filed in support of the petition, the petitioners have stated that they are in possession of the suit property. A close scrutiny of the affidavit would indicate that the petitioners want to find out whether the description of the property shown in the patta as per the plaintiff document and the field map / sketch in respect of old Survey No.78/19 tallies with the boundaries given in the suit schedule. The request of the petitioners is also to find out whether the property which is in occupation of the defendant is covered under the patta dated 28.02.1989. Indirectly the petition is also filed with an object to find out whether the petitioners are in possession of the suit property. It is open to the petitioners to file an application if there is any



discrepancy in identifying the property or the dispute is regarding the identity of the suit property. In this case it is not argued before this Court that there is dispute with regard to identity of suit property.

5. The revenue patta issued by the Revenue Officials will not show the boundaries of the property. However, the FMB sketch prepared pursuant to 'A' Register may show the boundary description of particular survey number or sub-division with reference to adjoining survey fields or sub-divisions. In the present case, the suit property is described as an extent of 3 cents in new survey No. 361/24 in Ootacamund with reference to four boundaries. With the description of property as found in the plaint, it is for the plaintiff to establish her title or enjoyment. The defendants cannot seek appointment of an Advocate Commissioner to find out whether the property covered under the patta produced by plaintiff is in the occupation of defendants. Since the object of appointment of Advocate Commissioner is evident from the affidavit, this Court has no hesitation to hold that the revision petitioners cannot seek appointment of an Advocate Commissioner to collect evidence.

6. The trial Court dismissed the application on the ground that the



C.R.P. (PD) No. 1351 of 2019

appointment of Advocate Commissioner can be to obtain evidence and not to collect the evidence. This Court finds no error or irregularity in the order of the lower Court in dismissing the Interlocutory Application. Therefore, this Civil Revision Petition is dismissed confirming the order of the lower Court. No costs.

16.12.2021

Index: Yes/ No

Speaking Order / Non-Speaking Order

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Copy to:

The District Munsif Court, Udhagamandalam.



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C.R.P. (PD) No. 1351 of 2019

S.S.SUNDAR, J .,

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C.R.P. (PD) No.1351 of 2019

16.12.2021