



CRP.No.1500/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.No.1500/2019 and CMP.No.9806/2019

[Video Conferencing]

Venkatesh

.. Petitioner

Vs.

ShanmugaSundaram

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the air and final order dated 24.08.2018 made in I.A.No.209/2018 in O.S.No.30/2018 on the file of the learned District Munsif, Tiruvarur.

For Petitioner	:	Mr.S.Sounthar
For Respondent	:	Mr.B.Ramamoorthy

ORDER

- (1) This Civil Revision Petition is directed against the order dated 24.08.2018 made in I.A.No.209/2018 in O.S.No.30/2018 on the file of the learned District Munsif, Tiruvarur.
- (2) The revision petitioner as plaintiff filed the Suit in O.S.No.30/2018 before the learned District Munsif Court, Tiruvarur, for declaring his title and for mandatory injunction to remove the structure and to



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hand over the possession of the Suit property and in default to put the plaintiff in possession over the property.

- (3) The plaintiff filed the Suit on the ground that the entire Suit property belonged to his father by virtue of an assignment order dated 10.08.1988. It is the case of plaintiff that after death of his father, his mother and his brother had released their right in favour of the plaintiff by a registered Release Deed dated 07.07.2017.
- (4) Therefore, based on the original assignment that was made in the year, 1988 and the subsequent document of release, the plaintiff claims title to the property. It is admitted that the defendant is the owner of adjoining land in a different survey number.
- (5) The respondent herein filed the Written Statement specifically denying the factual averments. It is the specific case of defendant/respondent that the Suit property is classified as natham and that the said property has now become the property of the defendant by virtue of a registered Sale Deed under which his father Nagaraja Devar purchased the property on 24.04.1972.
- (6) It is also stated that the very patta that was granted in favour of the plaintiff's father was cancelled after an enquiry. It is the case of



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defendant that he had put up a construction over the Suit property.

During the pendency of the Suit, the revision petitioner filed an application for appointment of an Advocate Commissioner to inspect the property along with the Taluk Surveyor and to note down the physical features and to measure the Suit property so that the Suit may be properly adjudicated after the Commissioner identify the exact encroachment. In short, the relief prayed for in the application is to identify the property which had been encroached by the defendant.

- (7) The plaintiff specifically gives the particulars of the property which is the subject matter of the Suit. This Court is unable to find any description of the encroachment that was made by the defendant. It is to be seen that the title of plaintiff is specifically denied by the defendant. The Suit property is described as vacant land measuring to an extent of 170m, (approx.2000Sq.ft.). It is true that the revision petitioner has not given the particulars of encroachment in measurements either in the plaint or in the affidavit filed in support of the petition. The encroached portion is not specifically described in the Plaint.



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- (8) However, the revision petitioner cannot be denied an opportunity to establish his case of encroachment by seeking assistance of Court to appoint an Advocate Commissioner. The Lower Court dismissed the application mainly on the ground that the revision petitioner has not described the portion of encroachment with reference to boundaries or measurements. Though, it cannot be presumed that the revision petitioner is in possession of the entire Suit property, it is premature to decide every issue before even appointing an Advocate Commissioner. The petitioner seeks the assistance through Commissioner to adjudicate the issues more effectively.
- (9) In view of the facts and circumstances of the case, this Court is inclined to pass the following order. The order in I.A.No.209/2018 in O.S.No.30/2018 dismissing the application filed by the revision petitioner is modified. The Advocate Commissioner who has been appointed shall inspect the property with the help of Taluk Surveyor and submit a Report about the physical features of the property. The Commissioner shall also give his Report to identify the Suit property with reference to the documents of title deed relied



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upon by the plaintiff and the respondent who is the defendant in the Suit. After identifying the respective property of plaintiff and respondent, the Commissioner may also give his findings whether any encroachment is made in the property over which the plaintiff seeks title.

- (10) With the above directions, the Civil Revision Petition is **disposed of**. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

20.12.2021

cda
Internet : Yes

To

1.The District Munsif Court, Tiruvarur.

S.S.SUNDAR, J.,



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