



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30 / 11 / 2021

CORAM:

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NOS.2347 & 3888 OF 2019 AND 1458 OF 2020

AND

CMP NOS.25669 OF 2019 AND 8401 OF 2020

CRP (PD) NO.2347 OF 2019

S.Chokkalingam Chettiyar

... Petitioner

Vs.

Ravindhiranadhan

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decreetal order dated 01.07.2019 passed in I.A.No.349 of 2019 in O.S.No.120 of 2018 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.P.Krishnan
For Respondent : Mr.T.Sundaravadanan



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

CRP (PD) NO.3888 OF 2019

S.Chokkalingam Chettiyar ... Petitioner

Vs.

Ravindhiranadhan ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the judgment and decretal order dated 27.09.2019 passed in I.A.No.677 of 2019 in O.S.No.120 of 2018 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.P.Krishnan
For Respondent : Mr.T.Sundaravadanan

CRP (PD) NO.1458 OF 2020

Ravindhiranadhan ... Petitioner

Vs.

S.Chokkalingam Chettiar ... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 06.02.2020 in I.A.No.1255 of 2019 in O.S.No.120 of 2018 on the file of the District Munsif cum Judicial Magistrate, Sriperumbudur.

For Petitioner : Mr.T.Sundaravadanan
For Respondent : Mr.P.Krishnan



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CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

COMMON ORDER

In all these Civil Revision Petitions, the parties are same and the subject matter of the property is also same.

2.In I.A.No.349 of 2019 in O.S.No.120 of 2018, the plaintiff filed an interlocutory application for amendment of the plaint on the basis of the written statement, by and which, the defendant disputed the title of the plaintiff.

3.It is well settled principles of law that whenever the title is disputed, the plaintiff shall go for a comprehensive Suit for declaration of title. In the instant case, originally the revision petitioner / plaintiff, filed a Suit for permanent injunction and after filing of the written statement disputing the title of the vendors of the plaintiff themselves has sought for amendment of the plaint into one of declaration of title and permanent injunction. The Trial Court has considered the issue and ordered amendment.



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

WEB COPY

4.The Hon'ble Supreme Court in ***JHARKHAND STATE HOUSING BOARD VS. DIDAR SINGH AND ANOTHER [CIVIL APPEAL NO.8241 OF 2009 DECIDED ON 09.10.2018]*** has held as under:

"11.It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction. "

5.However, there is a serious objection raised by the revision petitioner with respect to the valuation of the property as well as the pecuniary jurisdiction of the Trial Court to try the Suit. It is necessary for the Trial Court to look into the issue of valuation also while ordering amendment



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

sought for by the plaintiff. But however, the Trial Court has taken the valuation given by the plaintiff as Rs.48,100/- as correct value and allowed the application.

6.Under Section 25(b) of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, Court fee shall be computed on one half of the market value of the immovable property.

7.As per Section 7 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, Court fee shall be payable on the market value of the property as on the date of presentation of the plaint.

8.In the instant case, the value was fixed on the basis of the Sale Deed by virtue of the fact that the plaintiff purchased the property in the year 2006 i.e., Rs.48,100/-. But the actual value of the property as on the date of presentation of the plaint in the same year as on 25.06.2018 was not calculated.



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

WEB COPY

9. In fact, the plaintiff filed another interlocutory application for amendment of the value of the Court fee from Rs.161.00 to Rs.721.50 and the total Court fee from Rs.191.00 to Rs.751.50. The Trial Court while passing order, has found that the valuation made by the petitioner on the basis his title Sale Deed of the year 2006 is not correct and dismissed the application in I.A.No.1255 of 2019 on 06.02.2020 for not producing any documents showing the true market value of the property.

10. The procedure adopted by the Trial Court in both the above interlocutory applications i.e., I.A.No.349 of 2019 and I.A.No.1255 of 2019 is not correct. As specified under the Tamil Nadu Court Fees and Suits Valuation Act, 1955 the Trial Court should have gone into the issue of market value of the property before entertaining the plaint. Admittedly, the subject matter of the Suit property was purchased in the year 2006 for a value of Rs.48,100/-. While ordering amendment in I.A.No.349 of 2019, the Trial Court should have considered the correct market value of the property and collected the correct stamp duty. Whereas, it mechanically allowed the



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

WEB COPY

application on the ground that the defendant is questioning the title of the plaintiff. Further, while an application is filed to amend the Court fee which is wrongly calculated at Rs.191.00 instead of Rs.751.50, the Trial Court should have called for the correct market value and directed the plaintiff to pay the appropriate Court fee. Whereas, the Trial Court has dismissed the application. The dismissal of the application on the finding that the valuation of the property is not proper and the Court fee paid is not sufficient, the resultant position will be that the plaint has to be rejected. Such a procedure adopted by the Trial Court is not correct in the eyes of law.

11. Section 12 of the Tamil Nadu Court Fees and Suits Valuation Act, 1955, mandates that after hearing the both parties, shall fix the date for hearing for arriving at the correct valuation of the property and corresponding Court fee and then order amendment of the plaint fixing a time limit for payment of the Court fee. The fixation of the Court fee shall be done even before ordering the amendment of the plaint. In so far as that procedure is not followed in the present application, the order passed by the Trial Court in both these applications are not sustainable in the eyes of law.



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

WEB COPY

12. Accordingly, the order dated 01.07.2019 passed in I.A.No.349 of 2019 in O.S.No.120 of 2018 and the order dated 06.02.2020 passed in I.A.No.1255 of 2019 in O.S.No.120 of 2018 by the learned District Munsif cum Judicial Magistrate, Sriperumbudur, stands set aside. The Trial Court is directed to re-hear both the applications after giving ample opportunity to both the parties and pass appropriate orders.

13. In so far as CRP (PD) No.3888 of 2019 is concerned, the defendant filed an interlocutory application for appointment of Advocate Commissioner in I.A.No.677 of 2019. However, the Trial Court dismissed the application on the ground that the title dispute with respect to the Suit property, could be proved by submission of documents pertaining to the title of the Suit property by parties to the Suit. The claim for appointment of Advocate Commissioner to note down the physical features is wholly unjustifiable.



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

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14. On the other hand, a perusal of the plaint as well as the written statement, goes to show that the dispute relates to a larger extent of the property and that it involves sale of properties by two channels of persons. It is not a simple case of title dispute based on documents. But from the perusal of the written statement and the sale transactions, the assistance of the Advocate Commissioner, in the considered opinion of this Court, will elucidate the matter clearly. For that purpose, the appointment of Advocate Commissioner would be helpful.

15. The respondent / plaintiff, do not have any serious objection for appointment of Advocate Commissioner but would only submit that the entire extent of the property shall be measured. Here again, there is a dispute as to the total extent of the property. According to the defendant, the extent of the property is only 1249 Sq.ft out of 3.25 Acres, and another statement is that it is around 12 Acres. In such a situation, the Trial Court shall apply its mind to the exact factual position and appoint an Advocate Commissioner setting the requirements and therefore, the order dated 27.09.2019 passed in



CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

LA.No.677 of 2019 in O.S.No.120 of 2018 stands set aside and the matter is remitted back to the Trial Court for passing appropriate orders appointing the Advocate Commissioner.

16.In fine, the Civil Revision Petitions are allowed. No costs.
Consequently, connected Civil Miscellaneous Petitions are closed.

30 / 11 / 2021

Index : Yes/No
Internet : Yes/No
Speaking / Non-speaking order
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CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

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To

The District Munsif cum Judicial Magistrate
District Munsif cum Judicial Magistrate Court
Sriperumbudur.



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CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

M.GOVINDARAJ, J.

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CRP (PD) NOS.2347 & 3888 OF 2019
AND 1458 OF 2020

30 / 11 / 2021