

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2021

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(NPD).No.1232 of 2017

and

C.M.P.No.5806 of 2017

Selvan
S/o.Rajadurai

.... Petitioner

Vs.

1.Appadurai
S/o.Ayyasamy Padyachi

2.Rajendran
S/o.Ayyasamy Padyachi

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order dated 04.03.2017 made in I.A.No.11 of 2017 in A.S.No.10 of 2016 on the file of the learned Additional District and Sessions Judge at Ariyalur.

For Petitioner

: Mr.P.Dinesh Kumar

For Respondents

: Mr.P.Valliappan for R1
No Appearance for R2

ORDER

(The case has been heard through video conference)

Civil Revision Petition has been filed seeking to set aside the fair and decreetal order dated 04.03.2017 in I.A.No.11 of 2017 in A.S.No.10 of 2016 passed by the learned Additional District and Sessions Judge, Ariyalur.

2.The brief facts of the case is that the revision petitioner / appellant had purchased the suit property from one Muthukannammal on 22.07.1994. The said Muthukannammal was originally entitled to the suit property by virtue of settlement deed dated 01.12.1964 executed by one Subramanian. The petitioner / appellant approving the right and title of Muthukannammal on 23.08.1982 purchased 8 cents out of 35 cents in Survey No.470/9. The petitioner / appellant had constructed a house and is residing there and the advocate commissioner had inspected the same. A settlement register of the Revenue Department is filed as a document before the Court to show that 35 cents of land out of 70 cents in Survey No.470/9 belong to Subramanian. The advocate commissioner appointed by the Court had failed to take note of all the documents as per the direction of this Court in while inspecting the

suit property, thereby, the petitioner had filed a petition, seeking to examine the following witnesses:

- (i) The Village Administrative Officer*
- (ii) The Revenue Inspector*
- (iii) Tahsildar of Kolapai Village*
- (iv) The Advocate Commissioner viz. T.Duraiaraj and*
- (v) The independent witnesses viz. Kandasamy and Baskar*

for the purpose of proving the malafide intention of the said Narayanasamy Naidu for creating false entries.

3.Further, the Advocate commissioner appointed by the Court had exceeded jurisdiction and committed several errors in the report and plan, for which, the petitioner / appellant filed an application for re-issuing the commissioner warrant noting the objections and on the date of enquiry, the petitioner / appellant filed additional affidavit stating that the V.A.O should bring Adangal, Chitta and a Register of the Survey No.470/9 and to give evidence regarding the same.

4.The respondents had filed a counter stating that the petition seeking summons to the witnesses is not maintainable either under law or on facts. It was averred that the appeal was remanded by this Court to fix the suit property by appointing advocate commissioner with reference to revenue records and also to let in oral evidence. Accordingly the commissioner was appointed and the report and plan were filed. The petitioner / appellant also filed documents in support of his contentions and thereby the examination of further witnesses mentioned in the petition is not at all necessary for the purpose of deciding the issue. Since the suit is for declaration and title, it has to be established from the documents which have been filed. Further, it has been stated in the counter that the witnesses cannot prove title and examination of Tahsildar or Village Administrative Officer (V.A.O) will not help the Court in deciding the title and that the Tahsildar or V.A.O cannot say anything by way of oral evidence with regard to the title. It was further contended that the witnesses cannot be permitted to bring the document, since all the documents sought to be produced are public documents and only the certified copies of the same can be obtained and produced. It was also averred that the petition has been filed only for the purpose of delaying

the proceedings, since it was filed when the case was posted for arguments.

5.The Appellate Court vide a detailed order dated 04.03.2017 finding that the petitioner / appellant had not filed any objections to the report of the Advocate Commissioner within the time stipulated by the Court and finding that the point to be decided is whether the vendor of the petitioner / appellant has any right over the suit property or not and that the suit property is already fixed and there is no dispute as to the identity of the suit property or its location and also finding that the petition was filed wantonly to delay the proceedings, had dismissed the petition. Further, the Appellate Court had also held that the petitioner has not proved and satisfied he had already applied for certified copies of the public documents and that he was not provided the same as under Rule 75(3) of Civil Rules of Practice had dismissed the petition, against which, the present revision has been filed.

6.Learned counsel for the revision petitioner / appellant would submit that the revision petitioner is the plaintiff in the suit filed in O.S.No.346 of 1996 on the file of the District Munsif Court, Jayamkondan. The suit in

O.S.No.346 of 1996 was dismissed, against which, the petitioner had preferred an appeal in A.S.No.22 of 1999 before the Subordinate Court, Ariyalur and the Appeal was decreed in favour of the revision petitioner, against which, the respondents / defendants had preferred a second appeal in S.A.No.6 of 2006 before this Court. This Court vide order dated 14.09.2012 was pleased to set aside the judgment and decree passed in A.S.No.22 of 1999 and remanded the appeal back to the 1st appellate Court viz. the Sub Court, Ariyalur with directions to appoint an advocate commissioner with a mission to visit the suit property with the help of a Government Surveyor and measure the same with reference to the revenue records and also the documents in Ex.B3 to Ex.B14 and locate the same. At this stage, due to pecuniary jurisdiction, the appeal in A.S.No.22 of 1999 was transferred to the file of the learned Additional District and Sessions Judge, Ariyalur and renumbered as A.S.No.10 of 2016 and I.A.No.79 of 2015 was renumbered as I.A.No.18 of 2016. Placing reliance on the directions of this Court in S.A.No.6 of 2006, the petitioner / appellant had earlier filed a petition in I.A.No.18 of 2016 for reissuing the commissioner's warrant to inspect the suit property again. The Appellate Court vide order 16.12.2016 was pleased

to dismiss the same, observing that if the petitioner is aggrieved by the report of the advocate commissioner for having committed errors during the inspection of the suit property or mistake in his plan, the petitioner can very well examine the Advocate Commissioner and bring out the discrepancies and thereby I.A.No.11 of 2017 had been filed seeking to issue summons to five witnesses viz., 1.Village Administrative Officer, 2.Advocate Commissioner, 3.Tahsildar and two other independent witnesses viz. Kandasamy and Baskar. Whereas, the Appellate Court without taking into consideration the fact had dismissed the petition.

7.Learned counsel would further submit that there are grave errors in the report filed by the Advocate Commissioner and very recently the Advocate Commissioner has also passed away and it is necessary that the errors in the report have to be pointed out by examining the V.A.O and two other persons who know about the lie and location of the property. The learned counsel would reiterate that since the Advocate Commissioner is no more, the examination of the V.A.O is very much necessary and relevant for proving the case of the petitioner.

8.Per contra, the learned counsel appearing for the respondents / defendants would submit that the petition has been filed only with an intention of protracting and delaying the trial. He would submit that the petition was filed at the stage of arguments of the case. The learned counsel would further submit that the examination of the witnesses is not relevant to the issue on hand and there is no question with regard to the identity of the property and that the suit is filed only for declaration and permanent injunction with regard to the suit property and the examination of the witnesses mentioned in the petition is not at all necessary and relevant to decide the dispute between the parties since the witnesses sought to be examined cannot prove the title. Examination of the witnesses will not help the Court in deciding the title as they cannot speak about the title and about the fraud alleged to be committed by the parties. Further, the petition has been filed seeking to bring the public documents which are in custody of the revenue staff and that no evidence had been let in by the petitioner to show that he had applied for certified copies and that they were denied to him and the Appellate Court finding that the petitioner has not satisfied the same under Rule 75 (3) of Civil Rules of Practice had dismissed the petition and

he would submit that the revision petition is not maintainable and it has been filed only with an intention to delay the trial.

9.Heard the counsels. Perused the impugned order.

10.In this case, the suit had been filed by the petitioner / appellant before the trial Court seeking for declaration of his title to the suit property and for a consequential permanent injunction. The suit property is 27 cents of Punja land in survey No.470/9 out of the total extent of 70 cents on the western half. The contention of the petitioner / appellant in the suit is that out of 70 cents, 35 cents originally belonged to one Muthukannammal. It is the case of the petitioner / appellant that Muthukannammal sold 8 cents out of 35 cents to the 1st respondent herein and sold the remaining 27 cents to the petitioner / appellant herein, thereby the 1st respondent is estopped from denying the title of Muthukannammal and the right of the petitioner / appellant that and the 1st respondent had further created a sale deed through one Kishnammal Vahayara and started interfering with the peaceful possession and enjoyment of the petitioner / appellant.

11.The respondents / defendants had denied the contentions of the petitioner/ appellant and had filed a detailed written statement alleging that the property was originally owned by one Palanivel Padayachi and his brother Murugesu Padayachi. They have sold 8 cents of land on the northern side to one Narayanasamy Naidu on 21.03.1964 and that the husband of Muthukannammal is a signatory to the said sale deed as such Muuthukannammal knows pretty well that the property does not belong to her and that by fraudulent means and by misrepresentation she had sold the same 8 cents of land to the 1st respondent and later when the fraud committed by her was found out, she had returned the entire sale consideration and thereafter the legal heirs of Narayanasamy Naidu viz. Krishnammal and Rajagopal sold the 8 cents of land to the 1st respondent and the 24 cents of land was sold by Krishnammal and Rajagopal to the 2nd defendant on 21.08.1995. Patta, Chitta and tax receipts were in the name of the 1st respondent since he is the elder brother and the 2nd respondent is the younger brother. Since then the properties are in continuous possession and enjoyment of the respondents.

12.The trial Court after framing issues finding that the vendor of the petitioner / appellant has no right over the suit property had dismissed the suit. Against which, the petitioner / appellant preferred an appeal to the Subordinate Court, Ariyalur in A.S.No.22 of 1999. The Appeal was allowed in favour of the petitioner / appellant and the decree and judgment of the trial Court was set aside. Against which, the respondents herein preferred a second appeal in S.A.No.6 of 2006 and this Court vide order dated 14.09.2012 had set aside the judgment and decree of the 1st appellate Court and remanded the appeal back to the Sub Court, Ariyalur with a direction to appoint an advocate commissioner with a mission to visit the suit property with the help of a Government Surveyor and measure the same with reference to the revenue records and also the documents in Ex.B3 to Ex.B14 and locate the same. This Court had also directed the the 1st appellate Court to give due opportunity to both sides to let in additional and documentary evidence and dispose of the entire matter within five (5) months from the date of receipt of a copy of the order.

13.Thereafter, the Sub-Court, Ariyalur had appointed an advocate

commissioner on 11.07.2013 and the report of the advocate commissioner had been filed on 04.08.2014. Though the 1st appellate Court had called for objections, no objections were received within the stipulated time and hence the appellate Court had directed the parties to advance arguments on 11.08.2014, however, no arguments were advanced till 26.02.2015. Thereafter, a petition in I.A.No.79 of 2015 was filed by the petitioner on 05.01.2015 for reissuing the commissioner's warrant. At that stage, the case was transferred to the file of the learned Additional District & Sessions Judge, Ariyalur, by the order of the learned Principal District Judge for disposal in accordance with law and A.S.No.22 of 1999 was re-numbered as A.S.No.10 of 2016 and I.A.No.79 of 2015 was re-numbered as I.A.No.18 of 2016. Thereafter, another application in I.A.No.56 of 2016 had been filed for receiving additional documents which was allowed by the appellate Court. Thereafter, after much delay, the appellant / petitioner had examined himself and Ex.A4 to Ex.A8 had been marked on 10.01.2017. Thereafter, the appellant did not complete the examination on that day and on 12.01.2017, 24.01.2017, 30.01.2017 and 01.02.2017, the appellant remained absent and his evidence could not be completed. On 02.02.2017, the appellant re-

appeared and marked Ex.A9 to Ex.A12 and his cross examination was also could not be completed due to non cooperation from the appellant side. On 21.02.2017 the adjournment petition was filed by the petitioner / appellant and it was allowed with cost and the appellant (P.W.1) was directed to appear for cross examination. However, the revision petitioner / appellant on the next hearing date also failed to appear before the Court, instead the counsel filed a petition that the whereabouts of the appellant is not known to him and sought time. Thereafter, only on 27.02.2017, the petitioner / appellant re-appeared and subjected himself for cross examination and on the same day, the appellant examined his brother as P.W.5. On 28.02.2017, the application in I.A.No.11 of 2017 was filed seeking for issuance of summons to five witnesses including V.A.O, Tahsildar and the Advocate Commissioner.

14.The 1st Appellate Court taking into consideration the conduct of the revision petitioner / appellant and finding that the petition was filed only to delay the proceedings and protracting the case and also finding that the revision petitioner / appellant has not made out a case for summoning the

witnesses had dismissed the same.

15.On perusal of the records, this Court is also of the opinion that the petitioner has not made out a case for summoning the witnesses. Further, he had already marked the documents and that he has not satisfied the 1st Appellate Court with regard to Rule 75(3) of Civil Rules of Practice. As rightly stated by the Appellate Court, it is not a case that by examination of witnesses, the title of the property can be established. I do not find any illegality in the order passed by the 1st appellant Court and thereby it warrants no interference by way of revision.

16.Since the appeal is of the year 1999, direction is issued to the Appellate Court to dispose of the appeal as expeditiously as possible, preferably within a period of four (4) months from the date of receipt of a copy of this order. It is made clear that the observations made in this revision are only for disposing of the revision petition and it will not have any bearing in the appeal. The Appellate Court shall deal the case on its own merits and in accordance with law.

17.This Civil Revision Petition stands dismissed accordingly.
Consequently, the connected miscellaneous petition is also dismissed. No costs.

20.04.2021

kas

Index : yes / no

Internet : yes / no

To.

1.The Additional District & Sessions Judge
Ariyalur

2.The District Munisf Court
Jayamkondan

3.The Subordinate Court
Ariyalur

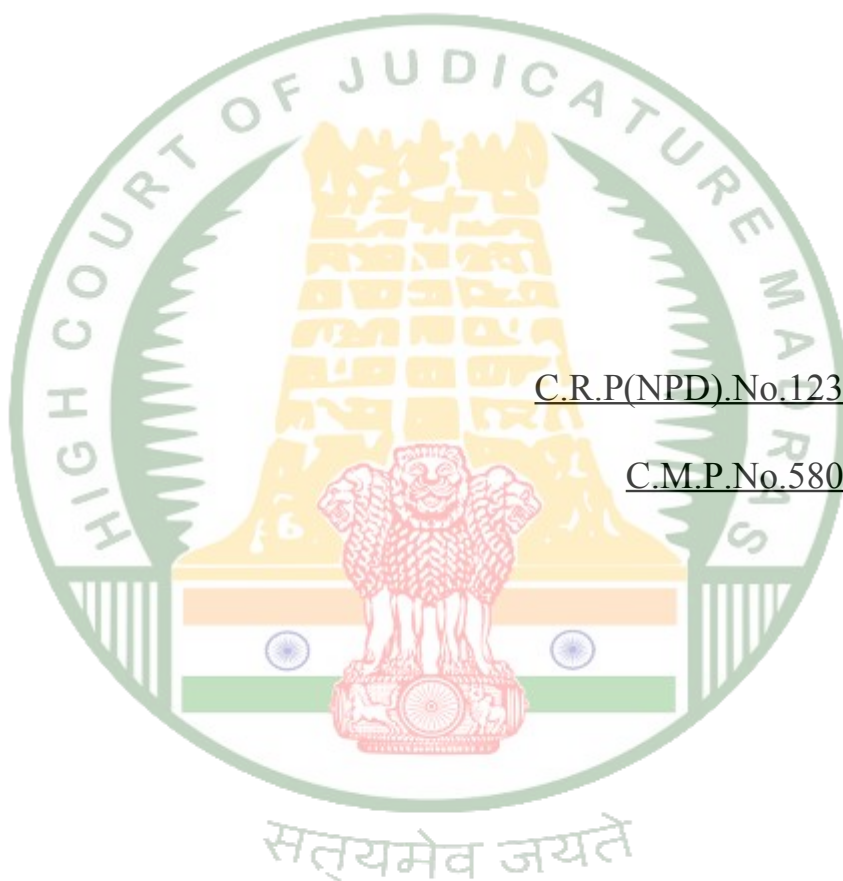


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