

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 30.06.2021

PRONOUNCED ON: 23.07.2021

Coram

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P. (PD) Nos. 3566 & 3568 of 2019

And

C.M.P.Nos. 20728 & 23377 of 2019

1. Muniammal

2. Indira Gandhi

3. Kannan

4. Inbavalli

5. Mekala

6. Rathna

7. Manjula

8. Bharath Vignesh

... Petitioners 1 to 8/Petitioners 1 to
8/Plaintiffs 1 to 7 & 9

9. Kavithayini

10. G.Harikrishnan

11. Perumal

12. Jayagantham

... Petitioners 9 to 12/L.Rs. Deceased
P 8

-Vs-

Elango

... Respondent / Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 16.07.2019 made in I.A.No. 154 of 2019 in O.S.No. 227 of 2014 on the file of the learned Principal Sub Court, Dharmapuri.

For Petitioners : Mr. N.Manoharan

For Respondent : Mr. Ma.Pa.Thangavel

COMMON ORDER

Both the Civil Revision Petitions have been filed by the plaintiffs in O.S. No. 227 of 2014, pending on the file of the Principal Sub Court, Dharmapuri, questioning the orders dated 16.07.2019 in I.A. Nos. 154 and 155 of 2019.

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2. There are two suits, O.S. No. 44 of 2011 and O.S. No. 227 of 2014, now pending on the file of the Sub Court, Dharmapuri. Joint trial had been conducted in both the suits.

3. O.S. No. 44 of 2011 had been filed by the revision petitioners, Muniammal and others against the respondent, Ilango, seeking declaration of title and protection of possession with respect to a tiled house in land measuring 1809 sq. ft., in Door No. 4/57, Old S. No. 401, New S. No. 401/N-2, Choodamani Street, Vella Goundan Palayam Village, Dharmapuri Town.

4. O.S. No. 227 of 2014 had been filed by the respondent, Ilango against the revision petitioners Muniammal and others, seeking declaration of title, protection of possession, protection from alienation, and also to declare a sale deed dated 13.08.2010 is not binding. The said suit had been filed with respect to vacant land measuring 4025 sq. ft., in S. No. 401, New S. No. 401/2. It had been further stated that the sub divided S. Nos. are 401/2N, 401/2R and 401/2P.

5. Joint trial had been conducted in both the suits. Both sides had adduced oral and documentary evidence. The suits had been posted for advancing arguments on 26.02.2019 and again on 05.03.2019.

6. At that time, the revision petitioners filed I.A. No. 154 of 2019 to reopen the evidence on their side and I.S. No. 155 of 2019 under Or. 26 R. 9 CPC for appointment of Advocate Commissioner to visit the suit properties along with the Village Administrative Officer and Surveyor and give a report on the physical features.

7. It is the contention of the revision petitioners that they had filed a suit claiming that there was a tiled house in the land, which was the subject matter of the two suits, whereas, the respondent claimed that it was only vacant land. The applications had been filed to obtain a clarification on this fact.

8. The applications were seriously objected by the respondent herein who pointed out that evidence had been let in witnesses had been cross examined and that the applications had been filed only to gather evidence and therefore should be dismissed.

9. By separate orders dated 16.07.2019, both the applications were dismissed. The learned Sub Judge pointed out the flow of the two

trials and lamented that the applications had been filed when the suits were posted for advancing arguments. It was also stated that there was a direction to dispose the two suits within a specific time period, which had long lapsed. It was specifically observed that there was no necessity to appoint an advocate commissioner and that the issues raised in the two suits could be decided on the basis of the pleadings and the documentary and oral evidence already on record.

10. Heard arguments advanced by Mr. N. Manoharan, learned counsel for the revision petitioners and Mr. Ma. Pa. Thangavel, learned counsel for the respondent.

11. The fact that evidence had been recorded in the two suits and that they were posted for arguments is admitted by both the learned counsels. It is the contention of Mr. N. Manoharan, learned counsel for the revision petitioners that there was a dispute whether there was a tiled house in the suit property or not, and to clarify the same, it would only be prudent to appoint an advocate commissioner. On the other hand, Mr. Ma. Pa. Thangavel, learned counsel for the respondent stated that the said fact can

be determined by the learned Sub Judge on analysis of pleadings and evidence and stated that the applications had been filed to gather evidence, which is not permissible.

12. Since evidence had been adduced by the parties, and the suits were posted for arguments, it may not be appropriate on my part to launch myself into an analysis of the pleadings and evidence to determine whether appointment of an advocate commissioner is required or not. Let the privilege of that endeavour rest with the learned Sub Judge.

13. In *Chinnathambi vs Anjali*, (2006) 5 CTC 494, a learned single Judge of this Court had held as follows:

“9. In a matter relating to investigation in to the disputed question of fact of possession, the power of appointment of Commissioner for local investigation cannot be exercised by the Court to assist the party to collect evidence, where the party can collect evidence by himself. Thus in a case, where the claim of the plaintiff that, she is in possession of the disputed property is denied

by the defendants by filing written statement, the disputed question of fact can be adjudicated upon by the Court, after framing of issues and recording evidence of the parties.”

14. Mr. N. Manoharan, learned Counsel, laid much stress on the ratio laid down in the judgment of the Hon’ble Supreme Court ***K.K. Velusamy v. N. Palanisamy, (2011) 11 SCC 275*** and stated that the fact that the suits were posted for arguments should not be weigh upon the mind of the learned Sub Judge, who should rather examine whether appointment of an Advocate Commissioner would enable determination of disputed facts. In ***K.K. Velusamy, (referred supra)*** it had been held as follows :

“14. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing

of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.

15. The learned counsel for the respondent contended that once arguments are commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do

something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognised with reference to exercise of power under Section 151 of the Code.”

15. It is the contention of Mr. N. Manoharan, that the learned Sub Judge should have allowed the applications to reopen the evidence and for appointment of an advocate commissioner, since there is a dispute whether the suit property is a vacant land or whether there is a tiled house in the said property.

16. There is one significant observation of the learned Sub Judge in the orders now questioned in these Civil Revision Petitions. The learned

Sub Judge had very categorically stated that the pleadings and evidence on record is sufficient to come to a just conclusion to the issues raised in the two suits.

17. Even in ***K.K. Velusamy, (referred supra)***, the Hon'ble Supreme had laid down a caveat. It had been stated that evidence can be reopened at any stage, when “*...if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across some evidence which he could not lay his hands on earlier...*”

18. In the instant case no additional evidence is sought to be adduced. No additional or new fact has surfaced after evidence had been closed and the suits had been posted for advancing arguments. The parties have been at lis from the year 2011, with one side claiming that there is a tiled house in the suit property and the other side denying that fact and claiming that the property is vacant land. Opportunity had not been denied to adduce evidence during the course of trial. Both sides had adduced oral and documentary evidence. The learned Sub Judge is of the firm opinion

that the evidence on record is sufficient to render a finding on that disputed aspect. It would then only be proper that this Court permits the Sub Judge to render a finding on the disputed issue. This Court, or for that matter, neither of the parties to the suit, can claim that further evidence is required and insist that the same may be explored. The Trial Judge is the master of the situation. Material records are available. When the Court is confident that a finding can be given on the issues on the basis of the pleadings and evidence already on record, it would only be appropriate that such view is respected and the Trial Court is permitted to render a finding on the issues raised.

19. I do not find any reason to interfere with the reasoning of the learned Sub Judge.

20. In the result, both the Civil Revision Petitions are dismissed. Connected Miscellaneous Petitions are closed. No costs.

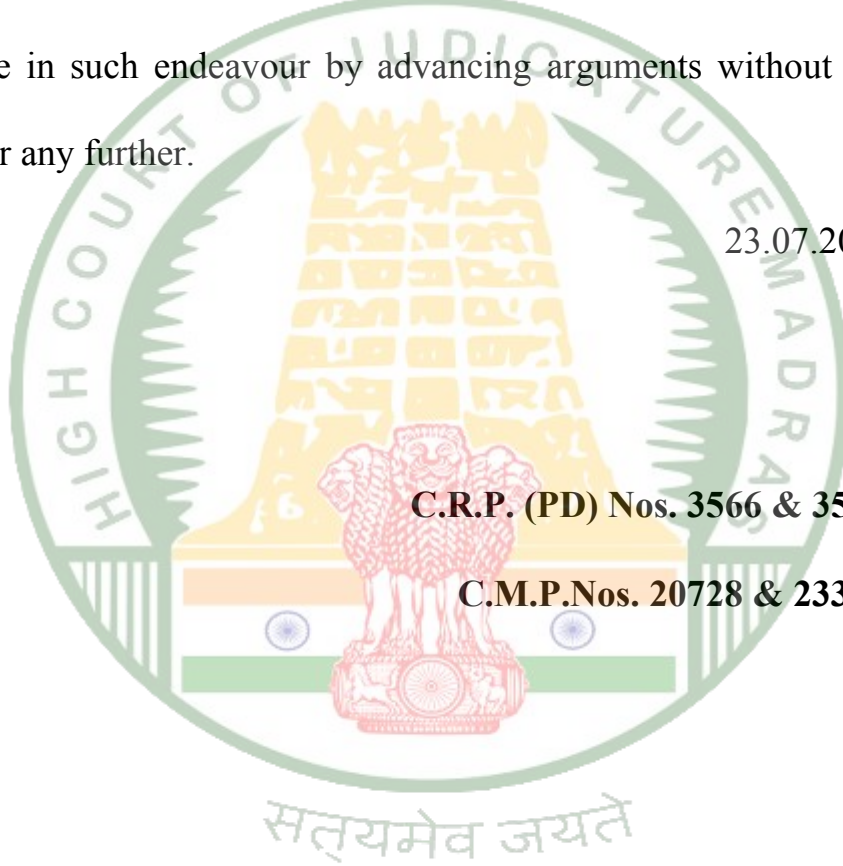
C.V.KARTHIKEYAN, J.

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21. The learned Sub Judge is directed to dispose the two suits on or before 31.08.2021, and I fervently hope that the Counsels would render assistance in such endeavour by advancing arguments without protracting the matter any further.

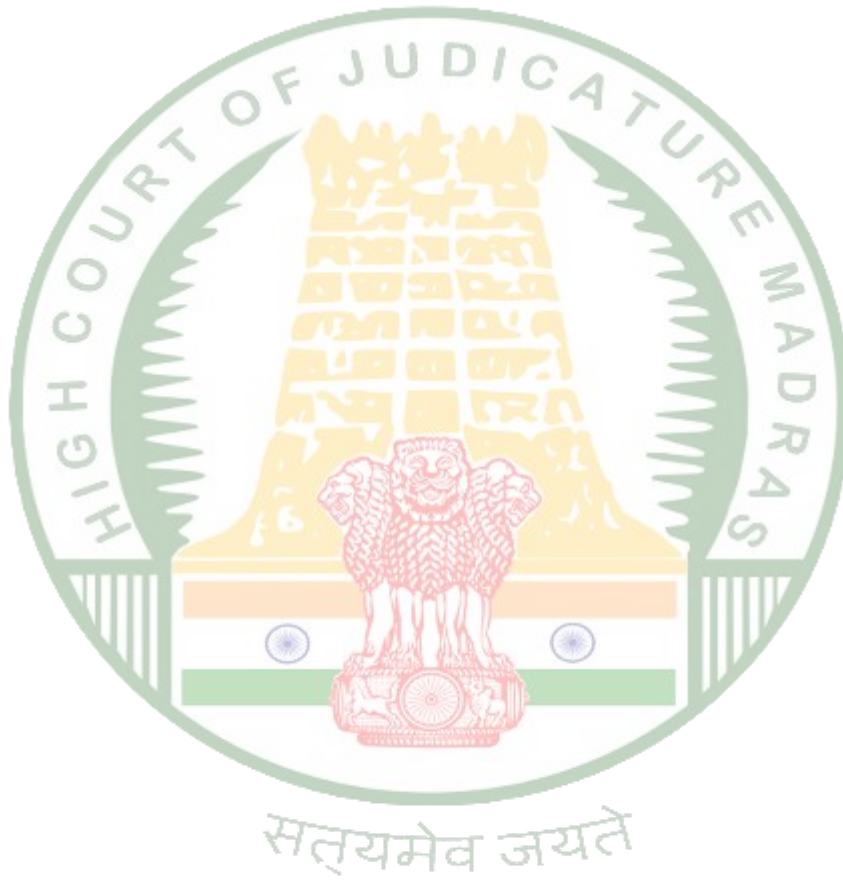
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