

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRP(PD) No.2578 of 2017
in
CMP.No.12287 of 2017

1.M.Vennal
W/o.late R.Manickam

2.M.Kumudham
W/o.Ganesan
D/o.Late R.Maickam

3.M.Rangaraj
S/o.Late R.Manickam

4.M.Chitra
W/o.Selvaraj
D/o.Late R.Manickam

... Petitioners/Petitioners 2 to 5/Plaintiffs 2 to 5

सत्यमेव जयते
Vs.

1.N.Venkidasamy Naidu @ Thambu
S/o.Nanjamma Naidu

2.V.Ramanandam
S/o.Venkidasamy Naidu @ Thambu

3.V.Lakshmanan
S/o.Venkidasamy Naidu @ Thambu

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to set aside the fair and decretal order dated 03.03.2017 made in I.A.No.10 of 2016 in O.S.No.336 of 2013 on the file of the Fifth Additional District Munsif Court, Coimbatore by allowing the Civil Revision Petition.

For Petitioners : Mr.Suganthan for
Mr.N.Manokaran

For Respondents : Mr.T.L.Thirumalaisamy

ORDER

(This case has been heard through video conference)

This revision petition has been filed seeking to set aside the Fair and Decretal order dated 03.03.2017 made in I.A.No.10 of 2016 in O.S.No.336 of 2013 by the learned V Additional District Munisf Court, Coimbatore, dismissing the petition for appointment of the very same Commissioner to measure the second item of the schedule property in the suit.

2. The learned Counsel for the petitioners/plaintiffs would submit that the petitioners are the plaintiffs in O.S.No.336 of 2013 which has been filed for a decree, restraining the respondents/defendants in any way interfering with the peaceful possession and enjoyment of the first item of the suit property either by encroaching the property or by altering the

physical features of the property and for mandatory injunction directing the respondents/defendants to remove obstructions in the second item of the schedule property. The learned Counsel would further submit the petitioners/plaintiffs had earlier filed a petition seeking for appointment of an Advocate Commissioner in I.A.No.234 of 2013 to note down physical features of the scheduled plain property. The Court was pleased to pass an order for the appointment of Commissioner and a Commissioner was appointed to verify the physical features along with a Taluk Surveyor. The Advocate Commissioner had conducted inspection on 20.02.2014 in the presence of Counsels on either side, but, unfortunately at the time of inspection, the petitioners had produced only the xerox copy of the sale deed pertaining to the second item of the schedule property and it was not considered by the Advocate Commissioner and that the Taluk Surveyor had also failed to bring the revenue records pertaining to the property and thereby, the Advocate Commissioner in paragraph 7 of his report had stated that in respect of the second item of the schedule property no relevant documents were produced by either side and that the relevant revenue records in respect of the second item of the schedule property was also not available on that day. Subsequently, the petitioners had obtained a certified copy pertaining to the sale deed in respect of second item of the schedule

property and thereby, the petitioners had filed I.A.No.10 of 2016 seeking for re-appointment of the Advocate Commissioner to measure the second item of the suit property with the assistance of a Surveyor according to the sale deed dated 26.02.1964 vide document No.477 of 1964, whereas, the trial Court holding that the Advocate Commissioner has held that the documents relating to second item of the schedule property were not produced by both the parties and that the details of the property were also not available and found in the records furnished by the Surveyor, had dismissed the same. The learned Counsel would submit that the petitioners have got a certified copy of the registered document pertaining to the year 1964 and though the survey number has not been stated, the boundaries of the property have been clearly mentioned in the documents and thereby, based on the boundaries mentioned in the document, the Advocate Commissioner can conduct a spot inspection along with a Surveyor and he can file his supplementary report about the property. He would further submit that it was really unfortunate that on the date of inspection the petitioners were not having the certified copies, thereby, he was unable to locate the property. Now the certified copies are available and that no harm would be caused to the other side, if re-inspection is conducted. He would further submit that the petitioners are not asking for appointment of a new Advocate Commissioner and that they are

asking only for re-issuance of warrant to the very same Advocate Commissioner who had conducted the inspection earlier and he would pray for setting aside the order dated 03.03.2017 made in I.A.No.10 of 2016 and would also pray for a direction for issuance of warrant to the very same Advocate Commissioner to re-inspect the property and give report.

3.The learned Counsel for the respondents/defendants would submit that the trial Court had rightly rejected the petition. He would submit that the petitioners had relied on a document in respect of the year 1964 whereas, the schedule in the document and the schedule which is shown in the plaint does not tally and that the survey number is also not available in the document and thereby, the learned Judge finding that the schedule of the property in the document and the schedule of the property shown as second item of the suit schedule property have not tallied and further that there no records were available with the Taluk Surveyor relating to the second item of the suit schedule property, had rightly rejected the petition and now the petitioners are trying to show some other property as their property and attempting to impress upon the Court. If the petitioners need to prove their case, they have to prove their case by letting evidence on their own rather than getting a report from the Advocate Commissioner.

4.At this Juncture, the learned Counsel for the petitioners / plaintiffs would submit that as per the certified copy of the document relating to the year 1964, the boundaries are available in the document and if the respondents have any objection in the document, they may raise the same even at the time of inspection and also before the Court and the Advocate Commissioner on the date of inspection only had stated that since both parties were not having the certified copy of the document, he was unable to fix the place and now since the certified copy of the relevant document is available and a direction may be issued to the Advocate Commissioner to re-visit and mark down the physical features of the property. The learned Counsel would submit that the second inspection is only sought for to supplement and aid the earlier report and that the petitioners are not attempting to get anything which is unjustifiable. In support of his contention, the learned Counsel would rely upon the Judgment in ***Kamaladevi Vs. T.P. Manoharan* report in 2009 (1) MLJ 1334** and the relevant paragraph is extracted hereunder;

8. I have given my anxious consideration on the submissions made on either side. On a careful perusal of the order passed by the trial Court it is seen that the reason for dismissal of the application was that the Commissioner had given measurement of the suit

property promptly and that would be sufficient for adjudication of the dispute. On the other hand, it could be seen that the dispute between the plaintiff and the defendant is with regard to total extent of the suit property. The plaintiff claims right over 12 cents as the property was derived from her ancestors and she was recently issued with a patta in respect of 12 cents. It is also alleged that the defendant had attempted to put up constructions in the suit property measuring 12 cents and is attempting to dig foundation in the property belonging to her. It is the further case of the plaintiff that the extent of 12 cents belonging to her is encroached by the defendant which is shown as suit property. Therefore, the plaintiff had sought for measurement of entire 12 cents with reference to patta issued in her favour and to locate the same on land so as to find correct location in the case. According to the learned counsel for the revision petitioner, the earlier report of the Advocate Commissioner even though depicted certain measurements, the same are not sufficient to come to the conclusion as to the total extent of the property belonged to the plaintiff. No doubt, the earlier commissioner had given measurement of the suit land and the said measurements are not sufficient to decide the issue in question as to whether the plaintiff is having in possession of 12 cents. If really, the right on 12 cents

as claimed by the plaintiff is established by way of proving her title through evidence then, it could also be found that the plaintiff is entitled to be in possession of the said 12 cents; likewise if really, the property has already been occupied by the defendant and the same was in his enjoyment then, it is for the defendant to raise plea of his long possession. Unless, the 12 cents said to have been belonged to the plaintiff is located on land by the Commissioner with reference to the revenue records with the help of a Surveyor, the crux of the suit cannot be decided, since the measurements in the report already on record are insufficient to decide the issue. However, on the facts and the circumstances in the given case, the earlier report and rough sketch filed by the Advocate Commissioner need not be set aside. The judgments cited by the learned counsel for the respondent would on the point that when the second commissioner is appointed, the report of the earlier Commissioner and sketch which may be contrary to the second Commissioner's report have to be scrapped. But the petitioner had applied for re issuance of the Warrant of Commission to the same Commissioner to measure the entire property which was not done by the Commissioner when the warrant of commission was issued to him at the earlier point of time. Therefore, it is nothing harm to order reissue of warrant of

commission in order to get a supplementary report which has even been recognized in the judgment reported in Veppanathar alias Karuppannan and another v. Kaliappan [2000 (III) TC 78]. The relevant passage of which would run thus:-

" By setting aside the order, it does not follow that the report is accepted by this Court. I direct the lower court to consider the objections in detail along with other evidence and pass orders on the objections to the Commissioner's Report. Lower Court also will consider whether the defects or deficiency stated in the objection could be rectified by calling for supplement report for which necessary direction shall be given by the Court. Only if the Court feels that even supplementary report will not cure the same, the report shall be set aside and second report will be called for by appointing another commissioner."

9. Therefore, the trial Court was wrong in dismissing the application, as if the petitioner seeks an order for second commission, which was actually intended to clarify the earlier report of the Commissioner by way of re issuance of warrant of commission. Similarly, the trial Court was wrong in holding that the measurements given by the Commissioner in his first inspection are sufficient to decide the issue. Therefore, it has become necessary

to interfere with the order of the trial Court in this revision. Accordingly, the civil revision petition is allowed and the impugned order of the trial Court dated 07.03.2008 passed by the District Munsif-cum-Judicial Magistrate, Nannilam in I.A.No.362 of 2007 in O.S. 52 of 2007 is set aside. The trial Court is directed to re issue Commissioner Warrant to the very same Advocate Commissioner directing him to inspect the suit property again, measure the entire suit property with the assistance of a qualified Taluk Surveyor at the cost of the plaintiff and file a report in detail as to the extent, boundaries and features of the suit property along with the sketch of the Taluk Surveyor. The Advocate Commissioner is entitled for the remuneration for the intended purpose at the same rate which was given to him on the earlier occasion. The plaintiff shall bear the remuneration of the Advocate Commissioner as well as the Taluk Surveyor. With these directions, this Civil Revision Petition is ordered. No cost. Consequently, connected Misc. Petition is closed.”

5.At this juncture, the learned Counsel for the respondents would submit that the measurements in the documents and the measurements shown in the item 2 of the suit schedule property does not tally.

6. In reply, the learned Counsel for the petitioners would reiterate that the petitioners are not insisting for scraping of the earlier Advocate Commissioner's report and they are only seeking to supplement and to aid the earlier report and to re-inspect the second item of the suit schedule property and if at all the respondents have any objection, it can be raised at the time of inspection and also by filing objection to the Advocate Commissioner's report.

7. Heard the learned Counsels and perused the materials on record.

8. In this case, I.A.No.10 of 2016 has been filed for appointment of the very same Advocate Commissioner to measure second item of the suit schedule property. The grounds stated by the petitioners is that on the date of inspection the petitioners were not in possession of the original sale deed in respect of the item 2 of the suit property and thereby, the Advocate Commissioner did not measure the property. Now the petitioners have obtained a certified copy and they have sought for re-issuing of Commissioner warrant for conducting further inspection with regard to item 2 of the suit schedule property.

9.While perusing the earlier report, it is seen that the Advocate Commissioner in paragraph 7 of his report has stated that during his visit, as far as second item of the suit schedule property is concerned, no relevant documents were furnished by both sides. It is further stated that the relevant revenue records with regard to the second item of the suit schedule property was also not available with the Surveyor. Now a certified copy of the alleged property has been produced and thereby, this Court is of the opinion that there would not be any impediment in the issuance of a fresh warrant to the same Advocate Commissioner to conduct a re-inspection in respect of item 2 of the suit schedule property.

10.Now an objection has been raised by the learned counsel for the respondents stating that there is no survey number in the sale deed and the measurements are also do not tally.

11. The objection of the respondents also seems valid. However, this Court is of the opinion that the Commissioner warrant can be re-issued to the very same Advocate commissioner directing him to re-inspect the suit schedule property and if there is any objection by the respondents/defendants, it can be raised at the time of inspection based on which, the Commissioner is directed to file a report.

12. With the above observations, this Civil Revision stands allowed and the order dated 03.03.2017 made in I.A.No.10 of 2016 in O.S.No.336 of 2013 passed by the learned V Additional District Munisf Court, Coimbatore, is set aside. I.A.No.10 of 2016 is allowed.

13. The Advocate Commissioner is entitled for remuneration as fixed by the Court.

14. The petitioners/plaintiffs shall bear the remuneration of the Advocate Commissioner as well as the Taluk Surveyor.

15. The trial court shall fix the date for re-inspection within three weeks from the date of receipt of copy of this order.

16. With the above observations, this Civil Revision Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No Costs.

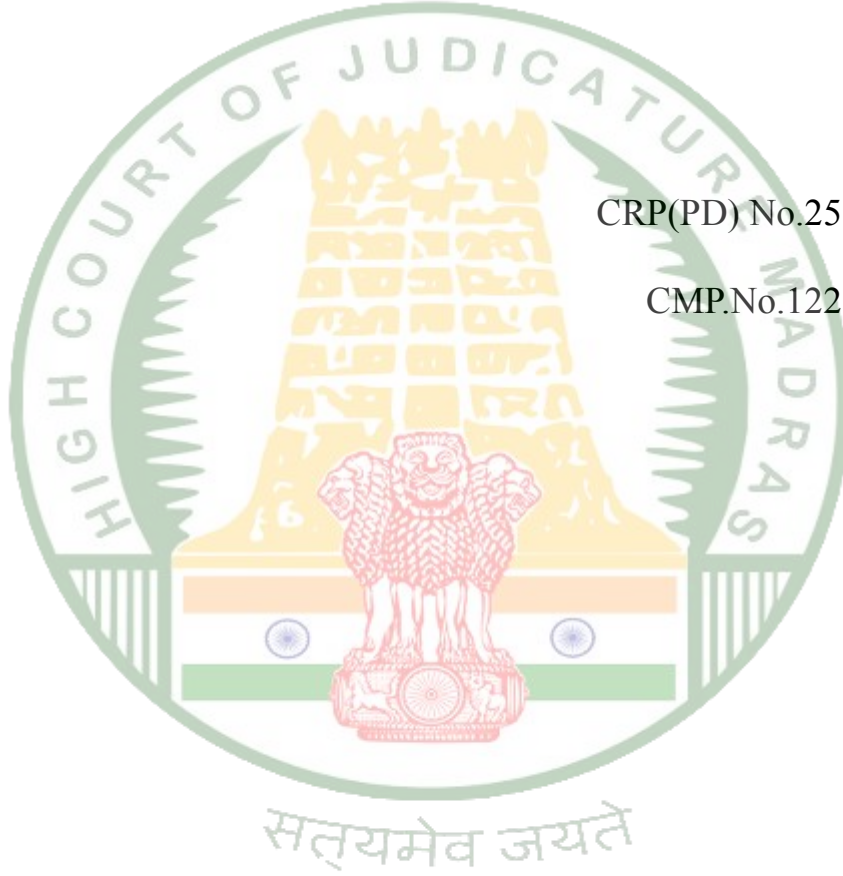
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A.D.JAGADISH CHANDIRA,J.

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To
The V Additional District Munisf Court,
Coimbatore.



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