

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2957 of 2017

and

C.M.P.No.13978 of 2017

K.Thirumalaisamy

.. Petitioner

Vs.

Nagamani

.. Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.07.2017 made in I.A.No.985 of 2015 in O.S.No.765 of 2015 on the file of the Principal Sub Court, Erode.

For Petitioner : Mr.M.Guruprasad

For Respondent : Mr.V.Regunathan

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”.)

This Civil Revision Petition is filed against the fair and decretal order dated 06.07.2017 made in I.A.No.985 of 2015 in O.S.No.765 of 2015 on the file of the Principal Sub Court, Erode.

2.The petitioner is the defendant in O.S.No.765 of 2015 on the file of Principal Sub Court, Erode. The respondent filed the said suit for appointment of Advocate Commissioner to measure the first item of the suit property belonging to the respondent and the property of the petitioner with the assistance of Taluk Surveyor and fix the eastern side boundary line of the first item of the suit property, declaring that the respondent is absolute owner of the first item of the suit property and for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. The respondent filed I.A.No.985 of 2015 under Order XXVI Rule 9 and Section 151 of C.P.C. for appointment of Advocate Commissioner to measure the first item of the suit property belonging to respondent and the property of the petitioner with the assistance of Taluk Surveyor and to fix the eastern side boundary line of the first item of the suit property and to submit the report with plan by making necessary endorsement of demarcation of boundary lines. According to the respondent, the first item of the suit property with larger extent jointly belonged to one Kaliyanna Gounder and Karuppanna Gounder, who are brothers and the said Karuppanna Gounder is the Father of the petitioner. The said Karuppanna Gounder had four sons including the petitioner, who filed suit in O.S.No.48

of 1964 against the said Kaliyanna Gounder and his sons for partition. Both the brothers died and in A.S.No.1245 of 1986, a compromise was entered into between the legal heirs of the above two brothers and first item of the suit property and other properties were allotted to four sons of Kaliyanna Gounder. The four sons of Kaliyanna Gounder partitioned the properties among themselves on the Registered Partition Deed dated 01.07.1999 in Doc.No.700/1999 on the file of the Sub Registrar Office, Kodumudi. In the said partition, the first item of the suit property was allotted to the share of one Shanmugam, who is one of the sons of the said Kaliyanna Gounder as “D” schedule property and he was in possession and enjoyment of the suit property.

3.The said Shanmugam along with his son Kanagaraj sold the first item of the suit property to the respondent by the sale deed dated 01.02.2002. From the date of sale deed, the respondent is in possession and enjoyment of the first item of the suit property by paying kist, etc., and tax to the Government. The Revenue Records were also mutated in favour of the respondent. Recording the compromise, final order was passed by this court in A.S.No.1245 of 1986 and in the same compromise decree in A.S.No.1245 of 1986, the sons of the said Karuppanna Gounder including the petitioner

herein were jointly allotted 2.00 acres of land in S.F.No.513, which is situated to the east of the first item of the suit property. The petitioner and his brothers entered into partition by partition deed dated 07.06.2006 registered in Document No.725 of 2006 on the file of the Sub Registrar Office, Kodumudi and the said 2.00 acres of land adjacent to east of the first item of the suit property was allotted to the petitioner herein as “D” schedule property.

4.The petitioner taking advantage of his property abutting to the respondent property, is solely obliterating the eastern boundary line of the respondent and trying to enter into the respondent property. On 06.09.2015, while the respondent was cultivating his land, the petitioner tried to obliterate the boundary line and trespassed into the second item of the suit schedule property alleging the same as Government Poromboke land. The respondent prevented the same and petitioner openly declared that he will renew his attempt at any point of time and in the circumstances, the respondent has come out with the present I.A. for appointment of Advocate Commissioner.

5.The petitioner filed counter affidavit and denied all the averments and stated that respondent is not the owner of the suit properties and the second item of the suit property is Government Poromboke land and he has to

prove his title by oral and documentary evidence. He cannot collect evidence by seeking appointment of Advocate Commissioner and prayed for dismissal of I.A.

6.The learned Judge considering the nature of reliefs sought for in the suit and averments in the affidavit and counter affidavit, allowed the I.A. and appointed Mr.A.Gokul, Advocate as Commissioner and directed the Advocate Commissioner to fix the boundary line of the eastern side of the petitioner and western side of the respondent with the help of Taluk Surveyor on receiving the documents from petitioner and respondent. The learned Judge also directed the Advocate Commissioner to issue notice to the parties and their counsel, before visiting the suit property.

7.Against the said order dated 06.07.2017 made in I.A.No.985 of 2015, the petitioner has come out with the present Civil Revision Petition.

8.The learned counsel appearing for the petitioner submitted that the suit was filed by the respondent is for demarcation, declaration and injunction and hence, the respondent has to prove his title by adducing oral and documentary evidence. There is no necessity for appointment of Advocate

Commissioner in the present suit. The application filed by the respondent is abuse of process of Court. The learned Judge failed to see that the respondent with a view to collect evidence, filed the present application. The application cannot be entertained in a casual manner unless circumstances specified under Order XXVI Rule 9 C.P.C. are satisfied. The learned Judge has failed to note that the process of law should not be misused at the instance of one party even before adjudicating the merits of the suit claim and prayed for allowing the Civil Revision Petition.

9.The learned counsel appearing for the respondent submitted that the learned Judge has considered all the materials placed before him in proper perspective and exercising his jurisdiction conferred on him, has allowed the I.A by giving cogent and valid reason. There is no error in the said order of the learned Judge warranting interference by this Court and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent and perused the entire materials on record.

11.From the materials available on record, it is seen that the respondent has alleged that he is the absolute owner of the first item of the suit property, having purchased the same by registered sale deed dated 01.02.2002 from one Shanmugam and his son Kanagaraj. It is the further case of the respondent that the petitioner, who is having adjacent land on the eastern side of the respondent property is trying to obliterate the boundary line and is trying to interfere with possession and enjoyment of the suit properties. On these averments, the respondent has sought for first relief of demarcation of the suit property for appointment of Advocate Commissioner to measure the first item of the suit property belonging to the respondent and the property of the petitioner with the assistance of Taluk Surveyor and fix the eastern side boundary line of the first item of the suit property, declaration that respondent is absolute owner of the first item of the suit property and for permanent injunction restraining the petitioner from interfering with his peaceful possession and enjoyment of the suit property. If the petitioner obliterates the existing boundary line, the respondent will not be in a position to establish his eastern boundary line. Further, by measuring the suit property along with sale deed in favour of the respondent, the petitioner will not be prejudiced in any way. It will not amount to collection of evidence on behalf of the

respondent. From the impugned order, it is seen that the learned Judge has directed the Advocate Commissioner to receive the documents from the respondent and petitioner, measure the suit property and demarcate the eastern side boundary line of the respondent and western side boundary line of the petitioner after issuing notice to both the petitioner and respondent and their counsel. There is no error in the order of the learned Judge warranting interference by this Court.

12. In view of the order of the learned Judge, it is open to the petitioner to produce his document to the Advocate Commissioner and be present at the time of measuring the property by the Advocate Commissioner and Taluk Surveyor and give objections, if any at that time itself. Further, the report of the Advocate Commissioner is not final. It is for the learned Judge to consider the same. The petitioner has right to file objections to Advocate Commissioner's report. It is for the learned Judge to consider the report of the Advocate Commissioner with the objections filed by the petitioner and respondent, if any, along with other materials placed during the trial.

13. In the result, this Civil Revision Petition is dismissed. The suit is of the year 2015 and the learned Principal Subordinate Judge, Erode is directed

to dispose of the suit as expeditiously as possible, in any event within six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

14.09.2021

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Index : Yes / No

Internet : Yes / No

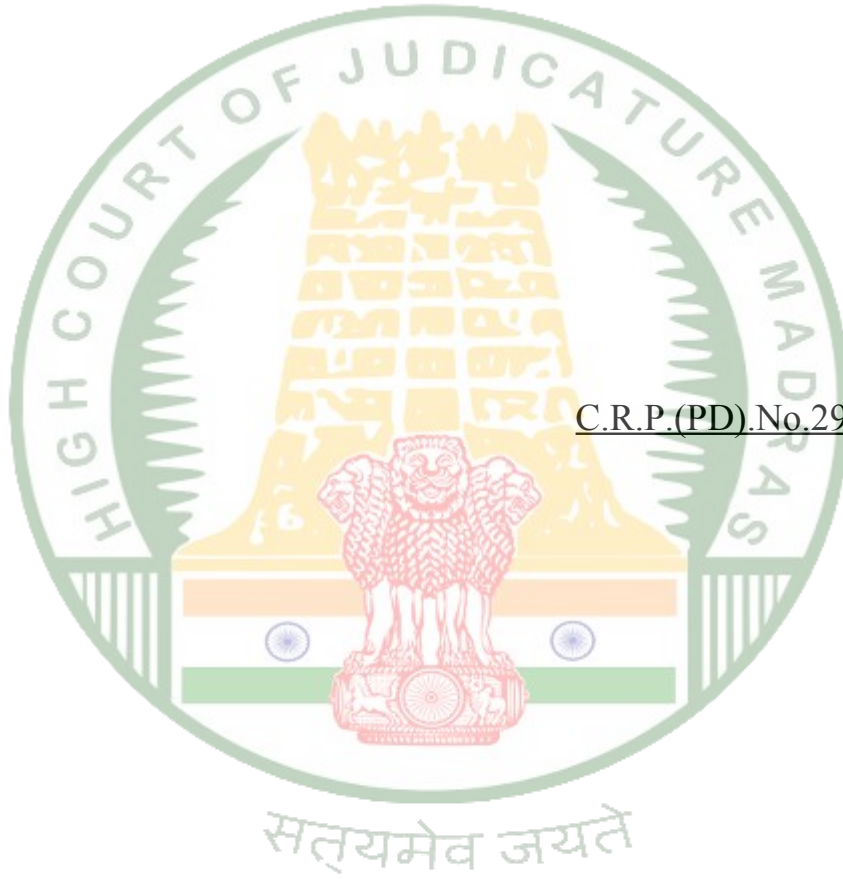
To

The Principal Subordinate Judge,
Erode.



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V.M.VELUMANI, J.
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