

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRP.PD.No.3256 of 2017

and

CMP.No.15203 of 2017

Kannan

... Petitioner

Vs.

Kannan

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in I.A.No.189 of 2017 in O.S.No.140 of 2012 dated 19.06.2017 on the file of the Court of District Munsif-cum-Judicial Magistrate, Kattumannarkoil.

For Petitioner

: Mr.A.Muthukumar

For Respondent

: Mr.B.Ramprabu

ORDER

सत्यमेव जयते

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.189 of 2017 in O.S.No.140 of 2012 dated 19.06.2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Kattumannarkoil, thereby, allowing the petition for appointment of an Advocate Commissioner.

2. The petitioner is the defendant in the suit filed by the respondent for declaration and injunction in respect of the suit property. The case of the plaintiff is that his vendor derived the property by way of oral partition ad-measuring 39 cents. While pending the suit, the petitioner attempted to destroy the ridges of the suit property and attempted to trespass into the suit property. Therefore, to measure the suit property and also demarcate the same, the respondent filed a petition seeking appointment of an Advocate Commissioner to inspect the suit property and note down the physical features with the help of Surveyor. The same was allowed and aggrieved by the same, the present Civil Revision Petition is filed.

3. The learned counsel for the petitioner submitted that even according to the respondent, he purchased the suit property from his vendor by virtue of the oral partition in respect of the suit property between the petitioner and another brother. When the suit was posted for arguments, the respondent filed a petition to re-open the case and the petition for appointment of Advocate Commissioner was filed. It is nothing but gathering evidence and the Court below ought to have allowed the petition.

He further submitted that the entire extent of the property ad-measuring 95 cents is allotted to the petitioner by the partition and he is in possession and enjoyment of the suit property. All the revenue records mutated in his name and Patta also issued in his name.

4. At this juncture, the respondent filed a suit for declaration and injunction as if the suit property was allotted to his vendor by oral partition ad-measuring 39 cents and the same was purchased by him. Therefore, he has to prove by material and oral evidence about the oral partition in respect of the suit property and also possession and enjoyment of the suit property. After examination of D.W.1 in chief, the suit was posted for cross examination of D.W.1. At this juncture, the respondent filed a petition seeking permission to file a reply statement for the written statement and the same was allowed and he filed a reply statement. Thereafter, the petitioner filed an additional written statement and the trial continued. After closing the evidence, when the suit was posted for arguments, the respondent filed a petition to re-open and the same was allowed. Thereafter, the present I.A has been filed for appointment of Advocate Commissioner.

5. The learned counsel for the respondent submitted that the Advocate Commissioner was appointed only to note down the physical features of the suit property and it would be useful for the Court below to decide the suit. Therefore, nothing warrants to interfere with the order passed by the Court below.

6. Heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

7. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed the suit for declaration and injunction in respect of the suit property. When the matter was posted for arguments, the present I.A has been filed for appointment of Advocate Commissioner to note down the physical features of suit property with the help of Surveyor.

8. On a perusal of the plaint, the respondent pleaded that the suit property ad-measuring 39 cents and his vendor derived title over the same by oral partition. According to the respondent, the suit property ad-measuring 95 cents, the entire suit property ad-measuring 95 cents is

allotted in favour of him and he is in possession and enjoyment of the same. In fact, all the revenue records mutated in his name and Patta also issued in his favour. At this juncture, the respondent sought for appointment of Advocate Commissioner to note down the physical features of the suit property.

9. On a perusal of the affidavit filed in support of appointment of Advocate Commissioner's application, it is stated that in the total extent of 95 cents, 15 cents property is in possession and enjoyment of one Ramanathan another brother of his vendor. His vendor was allotted 39 cents and the same was purchased by the respondent. The remaining property ad-measuring 41 cents was allotted in favour of the respondent and he is in possession and enjoyment of the same. Suppressing the sub-division made in the total extent, the petitioner obtained Patta and on the strength of the Patta, he attempted to trespass into the property. Therefore, the physical features of the suit property is very important and sought for appointment of Advocate Commissioner.

10. Admittedly, the respondent's vendor derived the title by oral partition. Therefore, the respondent has to prove his possession in the suit property and also the oral partition of his vendor by letting evidence. The appointment of Advocate Commissioner is nothing but gathering evidence to prove his possession.

11. In view of the above discussion, the order passed by the Court below is perverse and illegal and it is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.189 of 2017 in O.S.No.140 of 2012 dated 19.06.2017 is set aside. Consequently, the connected Miscellaneous Petition is closed. No costs.

11.03.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The District Munsif-cum-Judicial Magistrate,
Kattumannarkoil.
2. The Section Officer,
V.R.Section, High Court of Madras.



G.K.ILANTHIRAIYAN,J.

Kv

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