

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.09.2021

CORAM

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

CRP. (PD) No.3708 of 2019

and C.M.P.No.24364 of 2019

S.Ramesh

... Petitioner

Vs.

L.Subramaniam

... Respondent

Civil Revision Petition is filed under Article 227 Constitution of India to set aside the docket order dated 07.08.2019 passed in I.A.No.2 of 2019 in O.S.No.227 of 2018 on the file of the learned Principal District Munsif, Tirupattur, Vellore District, allow the said I.A., filed by the petitioner.

For Petitioner : Mr.A.Arun

For Respondent : Mr.R.Ramesh

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O R D E R

This petition is filed challenging the order passed in I.A.No.2 of 2019 in O.S.No.227 of 2018 by the learned Principal District Munsif Court, Tirupattur, Vellore District on 07.08.2019.

2.The learned counsel for the petitioner submitted that petitioner filed a suit in O.S.No.227 of 2018 against the respondent herein, seeking the relief of "directing the defendant, his men agents and servants not to interfere with the plaintiff's peaceful possession and enjoyment over the "A" schedule property by obstructing the construction made by the plaintiff therein." It is further the submission of the learned counsel for the petitioner that the petitioner purchased the property from his vendor on 12.03.2014. His vendor's title deed is a sale deed dated 16.05.1967. The petitioner is the possession and enjoyment of the property as per his registered sale deed; whereas the respondent's wife purchased the property on 11.09.1987 with specific extent and measurement. On 25.04.2011, the respondent's wife executed settlement deed in favour of the respondent. It is submitted that the sale deed in favour of the respondent's wife confines only to the extent of 3003 sq.ft. When the respondent's wife executed settlement in favour of her husband on 25.04.2011, the extent of the property is shown as 3171 ½ sq.ft. Taking advantage of this self-created document, with regard to extent of the property, the respondent tried to encroach upon the portion of land which was left behind by the vendor of the petitioner and encroached into the property of the petitioner. The petitioner was making construction in his own property and that was attempted to be obstructed. Therefore, the suit was filed.

3. It is further submitted that the petitioner filed I.A.No.1078 of 2018 for grant of temporary injunction. Initially, the petitioner was granted interim injunction. When the matter was taken up for final disposal, the Court observed that the petitioner had not taken any steps to appoint an advocate commissioner to prove the measurements of the property and I.A.No.1078 of 2018 came to be dismissed. Then, the petitioner filed I.A.No.2 of 2019 for appointment of the Advocate commissioner to inspect the suit properties covered under sale deeds dated 16.05.1967, 16.04.1987, 11.09.1987 and 12.03.2014 and the revenue records prior to the year 2011 to ascertain the exact boundaries with the help of the Village Administrative Officer, measure the same, to take photos, and file a detailed report along with Surveyor plan. This petition was opposed by the respondent. The learned trial Judge has dismissed the petition. Against the said dismissal order, this Civil Revision Petition is preferred.

4. The learned counsel for the petitioner submitted that the petitioner is in possession and enjoyment of the property within the extent of property purchased by him. Only when the respondent tried to interfere with the construction in his property, the suit came to be filed. The Commissioner was sought to be appointed as per observation made by the Court below in

I.A.No.1078 of 2018. However, this application came to be dismissed. Unless the Advocate commissioner is appointed and measure the property along with the surveyor and on the basis of the title deeds of both parties and revenue records, the *lis* between the parties could not be adjudicated correctly. Therefore, he prayed for setting aside the order of the learned trial judge and allow the I.A. seeking for appointment of the Advocate Commissioner.

5. The learned counsel for the respondent submitted that the suit is filed for bare injunction and appointment of Advocate commissioner is not necessary. This application is sought to be filed only for the purpose of collecting evidence, which is impermissible in law. He also submitted that there were already previous proceedings between the respondent and vendors of the plaintiff in a suit, which was decreed. Against the judgment and decree passed in the suit, an appeal was preferred before the learned Sub Judge, Tirupattur, in A.S.No.32 of 2011, which was allowed. In view of the previous proceedings, the petitioner cannot seek to appointment of an advocate commissioner.

6. Considered the rival submissions of the learned counsel for either side and perused the materials available on record.

7.As narrated above, issue between the parties is with regard to the boundaries of the properties of both the parties. The petitioner claims that he is making construction in his own property purchased through sale on 12.03.2014 and only because the respondent tried to interfere with his construction and enjoyment of the property, the suit came to be filed. As rightly pointed out by the learned counsel for the petitioner, there is variation in the extent of property purchased by the respondent's wife through sale deed dated 11.09.1987 and settled in favour of her husband, who is the respondent herein. In the sale deed dated 25.04.2011 executed in favour of the wife of the respondent, the extent of the property was shown as 3003 sq.ft. However, in the settlement deed executed by the respondent's wife in favour of the respondent, the extent of property was mentioned as 3171 ½ sq.ft. This result is the this suit between the parties. On the basis of measurements given in the settlement deed dated 25.04.2011, it is submitted by the learned counsel for the petitioner that respondent has tried to encroach upon the property of the petitioner. In the considered view of this Court, on the facts and circumstances of the case now put forth by the parties, nature of the claim, only if the Advocate Commissioner inspects the properties of both parties, measure the same with the help of the Surveyor and revenue records and the title deeds along with Village Administrative Officer, the issue can be adjudicated effectively and correctly.

Otherwise, there would be no clarity in regard to the extents of the respective properties of the parties and their possession thereof. The advocate commissioner's inspection and measuring the properties with the help of the surveyor, would certainly help the Court to decide the *lis* between the parties and avoid unnecessary oral and documentary evidence. With regard to other submissions raised by both the parties like previous litigation in A.S.No.32 of 2011, etc., these issues can be considered only at the time of trial and it cannot be considered now. Therefore, this Court sets aside the order of the learned trial Judge in dismissing the petition filed for appointment of Advocate commissioner and accordingly, the I.A. is allowed learned trial Judge is directed to appoint the Advocate commissioner with direction to inspect the suit property along with Village Administrative Officer and Surveyor to measure the properties of both parties as per their title deeds specifically, mentioned in the Commission petition and revenue records take photographs and file his report.

8. With the above direction this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

29.09.2021

Index: Yes / No

Speaking order / Non speaking order

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The Principal District Munsif,
Tirupattur, Vellore District



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G.CHANDRASEKHARAN. J.,

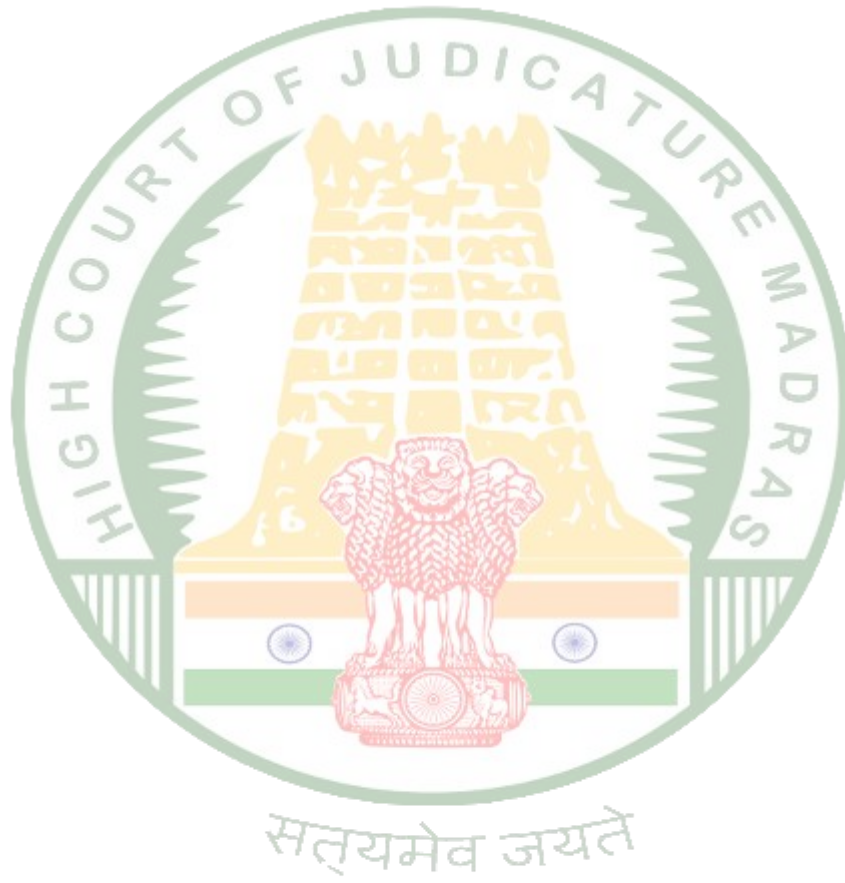
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