



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 05.07.2021

Pronounced on : 22.07.2021

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

WEB COPY

C.R.P. (MD) .No.647 of 2021

Vembu : Petitioner/ 1st Respondent / Plaintiff

Vs.

1.Selvam

2.Jeyakumari

3.The District Collector,
District Collector Office,
Tirunelveli District.

4.Tahsildar,
Tashildar's Office,
Kokkirakulam,
Palayamkottai Taluk,
Tirunelveli District.

: Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2019 in O.S.No.535 of 2017 on the file of Principal District Munsif Court, Tirunelveli, dated 06.01.2021.

For Petitioner : Mr. K. Suresh Subramanian
For R1 and R2 : No appearance
For R3 and R4 : Mr.A. Baskaran
Additional Government Pleader

O R D E R

The Civil Revision is directed against the order passed in I.A.No.1 of 2019 in O.S.No.535 of 2017, dated 06.01.2021 on the file of the Court of the Principal District Munsif, Thirunelveli, allowing the Commission Petition.

2. The revision petitioner is the plaintiff and he filed the suit claiming the relief of declaration that he is in lawful possession of the suit property as against the defendants 1 and 2 / Government Authorities and permanent injunction against the defendants 3 and 4 restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.



3. When the suit was in part heard stage, the defendants 3 and 4 have filed the above petition for appointment of Commissioner for inspecting the suit property with relevance to the boundary description and the details stated in the affidavit and submit a detailed report with plan. The learned District Munsif, after enquiry has passed the impugned order on 06.01.2021 allowing the application and appointed the Advocate Commissioner for inspecting the suit properties and note down the physical features pointed out in the pleadings of both parties and to file his report with plan. Aggrieved by the said order, the plaintiff has come forward with the present revision.

4. The learned counsel for the revision petitioner would submit that the trial Court has failed to consider the counter filed by the petitioner and the evidence of PW.1 that the Commission petition has been filed after a long time after recording of the evidence of PW.1 and it is filed only to fill up the lacuna and that the possession and title of the suit property can be decided on the strength of the evidence adduced by the parties.

5. Despite the receipt of Court notice, the respondents 1 and 2 / defendants 3 and 4 have not turned up directly or through counsel.

6. The learned Additional Government Pleader appearing for the respondents 3 and 4 / defendants 1 and 2 would submit that the entire Survey Number is a promboke land owned by the Government and that neither the plaintiff nor the defendants 3 and 4 have title or right or interest or possession over the suit property and that the defendants 3 and 4 are not entitled to collect evidence through the appointment of Commissioner. In order to decide whether the appointment of Commissioner is warranted it is necessary to consider the pleadings of the parties to the lis.

7. The case of the plaintiff is that Well in S.No. 229/54 of Kunnathur village was used by Mela Kunnathur Public for taking drinking water, that the adjoining land was in possession and enjoyment of one Vellachiammal, W/o. Pechimuthu, that the plaintiff, grand son of Vellachiammal, after her death, has been in possession and enjoyment of the said property, that the defendants 3 and 4 have been attempting to trespass and interfere with the plaintiff's peaceful possession and enjoyment of the suit property, that the defendants 1 and 2 have not raised any objections nor took any action and that the plaintiff after issuing notice to the defendants has laid the above suit for the relief of declaration as against the defendants 1 and 2 and for permanent injunction against the defendants 3 and 4.



8. As already pointed out, the defence of the defendants 1 and 2 is that the Suit in S.No.229/54 is a Government promboke land, owned by the Government and the said property was never in possession of the Vellachiammal and that neither the plaintiff nor the defendants 3 and 4 were in possession of the suit property. The defendants 3 and 4 have filed a written statement admitting the existence of the Well in S.No.229 / 55 situated on the East of S.No. 229 / 54 and taken a defence that the plaintiff's grand mother Vellachiammal never enjoyed the land to the knowledge of the defendants, that the land in S.No.229 / 54 was not a vacant land and the same was originally belonged to one Subbaiah and after his death, the same was in joint possession of his sons Vembu (plaintiff), Pechimuhtu and Paramasivam, that the brothers orally divided the land equally, that the said brothers sold the property to the 3rd defendant and his wife and thereafter, the 3rd defendant's wife has been in possession and enjoyment of the same except the Well, that his wife has made constructions and the defendants have raised many trees and that since the plaintiff has never been in possession and enjoyment of the suit property and hence, the suit for bare injunction is not maintainable.

9. No doubt, the plaintiff has shown 18 Cents of land in S.No. 229 / 54 in Kunnathur Village as the suit property. As already pointed out, according to the plaintiff, he has been in possession and enjoyment of the suit property, whereas, according to the defendants 3 and 4, they have been in possession and enjoyment of the same. It is pertinent to mention that the Government authorities viz., defendants 1 and 2 have taken a specific stand that the entire Survey Number has been belonging to the Government and the same was categorised as promboke land and that neither the plaintiff nor the defendants 3 and 4 can claim any interest or possession over the suit property.

10. As rightly pointed out by the learned counsel for the petitioner, the learned trial Judge by observing that there existed a dispute with respect to the identity of the boundaries of the suit properties and without redressing the said issue, the suit cannot be comprehensively decided, that the physical features has also been disputed by the respondents and that since the third defendant in written statement stated about the physical features that are situated in the suit properties it has to be decided, has allowed the petition.

11. It is settled law that Commission cannot be appointed to show or prove the possession of the property. In the case on hand, since the plaintiff has laid the suit, it is for the plaintiff to prove that he has been in possession and enjoyment of the suit property. No doubt, since the defendants have also taken a similar stand, it is for the defendants to prove their alleged possession



through oral and documentary evidence and they are not entitled to collect or gather evidence through the Advocate Commissioner.

12. As rightly pointed out by the learned counsel for the petitioner, the defendants 3 and 4 have been attempting to show their alleged possession and as such, the same cannot be permitted. Hence, this Court decides that the impugned order allowing the Commission application is not good in law and the same is liable to be set aside.

13. In the result, the Civil Revision Petition is allowed and the impugned order, dated 06.01.2021 passed in I.A.No.1 of 2019 in O.S.No.535 of 2017 on the file of Principal District Munsif Court, Tirunelveli is set aside. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

trp

To

The Principal District Munsif Court, Tirunelveli.

+1 CC to M/s.GP (SR-23732[F] dated 23/07/2021)

+1 CC to M/s.K.SURESH SUBRAMANIAN, Advocate (SR-23594[F] dated 23/07/2021)

order made in

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22.07.2021

TR(05.08.2021) 4P 4C