



WEB COPY

C.R.P.(MD)No.889 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P. (MD)No.889 of 2021

and C.M.P. (MD)No.4872 of 2021

(Through Video Conference)

M.Punniyamoorthy

... Petitioner

Vs.

1. Natarajan (Died)
2. K.Swaminathan
3. G.Duraisingam
4. N.Udayappan
5. Thanjavur Corporation
Represented by its Commissioner,
Having Office at: Gandhi Road,
Thanjavur Town.

6. The Town Surveyor No.2,
Thanjavur, Having office at: Gandhi Road,
Thanjavur Town,

7. Sundarambal

8. Sasikala

9. Appu @ Subramanian

... Respondents

PRAYER: Petition filed under Article 227 of the Constitution of India praying to allow this Revision Petition, set aside the order and decreetal order passed by the II Additional District and Sessions judge, Thanjavur in I.A.No.16 of 2019 in A.S.No.27 of 2016, dated 09.02.2021.

For Petitioner : Mr.P.Vadivel

For RR 7 & 8 : Mr.Niranjana S.Kumar

O R D E R

Heard the learned counsel on either side.

2. The first defendant in O.S.No.137 of 2012 on the file of learned Principal Sub-Ordinate Judge, Thanjavur, is the revision petitioner herein. The said suit was instituted by one Natarajan seeking reliefs of declaration and permanent injunction. The suit was partly decreed vide judgment and decree dated 12.04.2016. Aggrieved by the same, both the Plaintiff as well as this Revision Petitioner preferred independent Appeals. The Revision Petitioner



herein filed A.S.No.27 of 2016 before the District Court which is presently pending before II Additional District and Sessions Judge, Thanjavur. In the said Appeal, the Petitioner herein filed I.A.No.16 of 2019 for appointing an Advocate Commissioner for the purpose of visiting the suit properties with the help of Surveyor to correlate the properties mentioned in Ex.A1 partition deed and file a report as to whom the "A" schedule property in the said partition deed Ex.A1 was allotted. The said interlocutory application was dismissed by the impugned order, dated 09.02.2021 by the first Appellate Court. Questioning the same, this Revision Petition has been filed.

3. The learned counsel appearing for the Revision Petitioner reiterated all the contentions set out in the memorandum of grounds. He also placed reliance on the decisions in the case of **P.Sangili and others vs. Ramakrishnan and others** reported in 1974 (1) MadLJ 87 and in the case of **K.R.Kamalraj vs. C.Sridharan** reported in 2021 (2) CTC 650 in support of his contentions.

4. I am not persuaded by the submissions of the learned counsel appearing for the Revision Petitioner. As rightly pointed out by the learned counsel appearing for the contesting respondents, the petitioner herein had filed an Interlocutory Application (I.A.) before the Trial Court seeking for appointing an Advocate Commissioner. The said I.A. was allowed and the Advocate Commissioner visited the suit property and measured the same with the assistance of a Surveyor with reference to Ex.A1, and also filed his report. If according to the petitioner herein, the Advocate Commissioner failed to correlate as to whom the "A" schedule property of Ex.A1 was allotted, he ought to have filed his objections and sought re-issue of the warrant. He had failed to do so. Of course, there is no bar against the maintainability of the application filed by the Revision Petitioner. But, the question is whether the Court below was justified in dismissing the same. In paragraph no.9 of the impugned order, the first Appellate Court has stated as follows:

"(9) Considering the both side arguments, it is found that both parties admitted the Ex.A1 partition deed, that the division of portion for common enjoyment have been earmarked based upon the portions and compartments of the house properties available at the time of division. The respondent contended that subsequent to the Advocate Commissioner's visit of the suit properties the petitioner completely demolished a house property comprised in T.S.No.1992. This contention was not denied by the petitioner. Therefore, this Court accepts the arguments of the respondents that correlation of the suit properties with the details mentioned in the Ex.A.1. partition deed is not possible. The petitioner has not assigned any reason for not requesting in the lower court



that the suit property should be measured in comparison with the details found in the partition deed. Therefore, this court views that appointment of Advocate Commissioner at this stage is unnecessarily prolonged the legal proceedings. Moreover, the petitioner has to prove his claim on the basis of his vendor's title deed. Therefore, this court finds that the petitioner has to prove his case by the oral and documentary evidence already filed during the trial. He cannot collect evidence through the appointment of Advocate Commissioner. Therefore, this Court finds no valid reasons to appoint the Advocate Commissioner., So, this court decided that this petition is not liable to be allowed. The point is answered accordingly. "

5. Though the Appeal was filed way back in 2016, the application was filed only when the First Appeal was posted for final disposal. Of course, the learned counsel for the Revision Petitioner would state that the office of the presiding Judge of the first Appellate Court was vacant but that is not a ground for filing such an application when the Appeal itself was listed for final disposal.

6. I remind myself that I am only exercising jurisdiction under Article 227 of the Constitution of India and that, only if the order passed by the Court below is shown to be perverse or illegal, I can interfere. A case for interference under Article 227 of the Constitution of India has not been made out. Therefore, finding no ground to interfere, this Civil Revision Petition is dismissed. No costs. Consequently, connected C.M.P.(MD)No.4872 of 2021 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The II Additional District and Sessions Judge,
Thanjavur.

2. The Record Keeper,
Madurai Bench of Madras High Court,
Madurai. 2 Copies

+1 CC to M/s.NIRANJAN S.KUMAR, Advocate (SR-19300[F] dated
15/06/2021)

Order made in
C.R.P. (MD) No.889 of 2021

Dated:
11.06.2021

CN(21.06.2021) 4P 5C