



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.822 of 2020

and

C.M.P. (MD) No.5581 of 2020

WEB COPY

R.Sivarasu

.. Petitioner/Respondent/
Plaintiff

-vs-

1.Senthilkumar

2.Jothikannan

3.Ganeshkumar

4.Mahalakshmi

.. Respondents/Respondents/
Defendants 1 to 4

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order made in I.A.No.7 of 2019 in O.S.No.63 of 2019 by the District Munsif Court, Palani dated 30.09.2020.

For Petitioner : Mr.D.Venkatesh

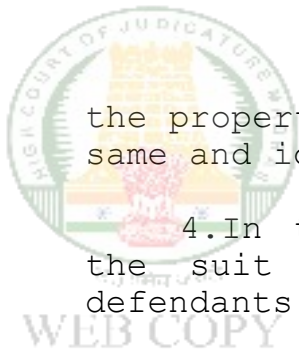
For Respondents : Mr.M.P.Senthil

ORDER

Aggrieved by the order, dated 30.09.2020, passed by the learned District Munsif, Palani, appointing an Advocate Commissioner, the plaintiff is before this court.

2.The plaintiff had filed a suit in O.S.No.63 of 2019 on the file of the District Munsif, Palani, for a declaration that the Settlement Deed dated 13.08.2018 executed by one Ponnusamy in favour of the 1st defendant is null and void and for a consequential injunction restraining the defendants from interfering or entering into the suit property on the strength of this Settlement Deed.

3.The suit property is comprised in S.No.448 totally measuring an extent of 14 acres and 35 cents. The respondents herein had resisted the said suit stating that the plaintiff had lands abutting the lands of the defendants on the South and it is these properties that have been shown as the suit property. Since the dispute was with reference to the demarcation of properties, the defendants have taken out an application in I.A.No.7 of 2019 for appointing an Advocate Commissioner to note down the physical features of the petition mentioned properties with the help of a Village Administrative Officer and a Surveyor, demarcate the boundaries of



the properties as per the documents and revenue records, measure the same and identify the four boundaries.

4. In the impugned application, the defendants had listed out the suit property as well as the property belonging to the defendants.

5. The plaintiff chose to object to the appointment of an Advocate Commissioner stating that there was no discrepancy with reference to the boundaries. They had also stated that the prayer of the defendants to measure S.No.436/2 only as per the Settlement Deed is *mala fide*, as the entire property has to be measured.

6. The learned District Munsif, Palani, on hearing both parties, allowed the application and issued a warrant to the Advocate Commissioner to measure the entire extent of S.No.436/2 with the help of the Surveyor and the Village Administrative Officer, demarcate the boundaries, note down the physical features and submit a report and plan. This order is under challenge in this revision.

7. The contention of the petitioner is that the suit property is situate in S.No.448 and not in S.No.436/2 and by the impugned order, the learned Judge has only directed the Advocate Commissioner to visit the properties situate in S.No.436/2 and note down the physical features, measure the boundaries etc.

8. Heard the learned counsel on both sides.

9. After elaborate arguments, both the counsels agreed that the Civil Revision Petition be disposed of by modifying the scope of the warrant to include not only the entire extent of S.No.436/2 but also the entire extent of S.No.448.

10. In view of the above, this Civil Revision Petition is disposed of, modifying the scope of the warrant issued to the Advocate Commissioner to include not only the entire extent of S.No.436/2 but also the entire extent of S.No.448. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

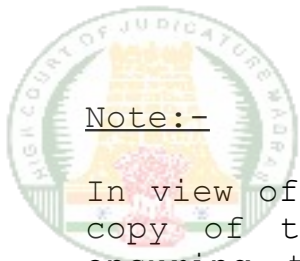
Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar (CS)

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Note:-

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The District Munsif, Palani.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-38384[F] dated 13/12/2021)

C.R.P.(PD) (MD) No.822 of 2020

Dated: 10.12.2021

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