



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1425 of 2021

and

C.M.P. (MD) No.8020 of 2021

Janaki

... Petitioner/Petitioner/
Plaintiff

vs.

1.Sekar

2.Muthusamy

... Respondents/Respondents/
Defendants

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to call for the records in pertaining to the fair and decreetal order dated 06.01.2021 passed by the District Munsif Court, Karur in I.A.No.368 of 2018 in O.S.No.340 of 2017 and set aside the same.

For Petitioner : Mr.T.Vadivelan

For Respondents : Mr.V.Balaj

ORDER

The plaintiff, who is the revision petitioner, is challenging the dismissal of his application seeking appointment of an Advocate Commissioner to measure the suit property with the qualified Surveyor and for a direction to submit the report.

2.The brief facts preceding the filing of the above Civil Revision Petition are herein below set out.

3.The petitioner/plaintiff has filed a suit in O.S.No.340 of 2017 for bare injunction restraining the defendants, their men, agents, servants and others from interfering with his peaceful possession and enjoyment of the suit property.

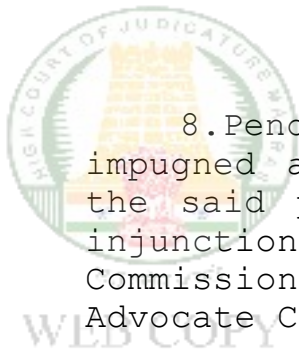


4.The learned counsel on behalf of the plaintiff would submit that the suit property, which is a Natham Land, belonged to the plaintiff's grandfather, namely, N.Karuppannan, who has been in an uninterrupted possession and enjoyment of the property for over so many years and recognizing the long possession and enjoyment, the Revenue Authorities had granted patta in the name of N.Karuppannan under patta No.1707. The said N.Karuppannan had settled the property on the plaintiff, his granddaughter out of love and affection. The possession of the property was also handed over to her on the date of execution of the settlement deed ie., 26.09.2005. Pursuant to this settlement deed, the plaintiff has been in possession and enjoyment of the property and had obtained mutation of the revenue records and had also got the property tax, water tax etc transferred in her name. While so, the defendants who are utter strangers having no title or interest over the suit property started interfering with the plaintiff's enjoyment of the same and on 10.08.2017, had illegally trespassed into the property and threatened the plaintiff. This was, very great difficulty, averted by the plaintiff. Since the threat of the defendants was a continuing one, the plaintiff had come forward with the present suit.

5.The defendants had filed a written statement *inter alia* denying the claim of the plaintiff and stating that incorrect measurements have been given by the plaintiff. The defendants/respondents had taken a stand that the plaintiff had raised a compound wall on the Eastern side of the property and the property of the defendants is situated immediately East of the North-South Tar Road and East of this property is the property owned by the plaintiff.

6.The defendants would submit that the property owned by them is not a perfect square and has an uneven measurement. Therefore, while constructing the property and following Vasthu, the plaintiff had constructed his compound wall inside his property by leaving a portion of his property outside the compound wall ie., the defendants had left a vacant space to the East of the compound wall. This space was being utilized to attend to the white washing and repairs of the wall. The vacant space measured 1 feet in width at the Northern end of the compound wall and as it proceeds towards South, the width of the vacant site increased and at the Southern tip, it measured 5 feet in width. While putting up the construction, the plaintiff attempted to encroach upon this place and this was objected to by the defendants and hence, the suit.

7.The defendants would contend that there is no cause of action for filing the suit.



8. Pending the suit, the plaintiff came forward with the impugned application. The defendants/respondents had objected to the said petition *inter alia* contending that in a suit for bare injunction, an application for appointment of an Advocate Commissioner was unheard-of, so that the plaintiff cannot use the Advocate Commissioner to gather evidence.

9. The learned Additional District Munsif, Karur, by the order dated 06.01.2021 was pleased to dismiss the said application and challenging the same, the petitioner is before this Court.

10. The learned Judge relying on the judgment of this Court reported in **2012 (5) LW 300 (Santha Satheesh Vs. H.J. Walter and others)** held that the Advocate Commissioner cannot be appointed to gather evidence and further, in a suit for permanent injunction, the burden of proving possession is exclusively upon the plaintiff by bringing in cogent evidence to support his claim. Therefore, the learned Judge had dismissed the application. The said order is the subject matter of challenge before this Court.

11. The learned counsel appearing on behalf of the petitioner/plaintiff would rely upon paragraph No.11 of the written statement to state that even according to the defendants/respondents, this property is not a perfect square and that the vacant space East of the compound wall also belongs to him. The learned counsel would therefore submit that there is a necessity to measure the suit property in order to arrive at a solution for the dispute between the parties.

12. Heard the learned counsel and perused the records.

13. The reasons upon which the impugned petition has been filed are narrated in paragraph Nos.9 and 10 of the affidavit filed in support of this petition. It is extracted herein below:-

"9. It is submitted that the suit property is to be measure out by the qualified surveyor, the dispute between the parties will come to end and the same will effectively helps this Hon'ble Court to come to conclusion.

10. By allowing this petition, no prejudice will be caused to respondents, on the other hand, if the petition is not allowed I will be put too irreparable loss and hardship which cannot be compensated in any means."

14. Reading of the above does not make out any reason except to imply that by measuring the suit property its identity can be decided which amounts to gathering evidence. The plaintiff has come forward with the suit for bare injunction stating that the



property belonged to her great grandfather and the patta had been issued in his favour by the Revenue Authorities. She has contended that after her grandfather, she has been in possession and enjoyment of the suit property. Therefore, the burden is on the plaintiff to establish her pleadings. She cannot seek the assistance of the Advocate Commissioner to demarcate and identify her property. Further, the suit is one for bare injunction and as a general rule, an Advocate Commissioner cannot be appointed to note down the physical features in a suit for bare injunction unless special circumstances are set out. In the instant case, neither the reading of the affidavit nor the arguments would set out such special circumstances. Therefore, the order passed by the learned District Munsif, Karur in I.A.No.368 of 2018 in O.S.No.340 of 2017 dated 06.01.2021 does not require any reconsideration and consequently, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

The District Munsif,
Karur.

C.R.P. (MD) No.1425 of 2021
12.11.2021

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