



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRP(MD)No.1001 of 2020

and

CMP(MD).No.6526 of 2020

T.Muthulakshmi

....Petitioner/Petitioner/Defendant

vs.

Murugan

...Respondent/Respondent/Plaintiff

PRAYER: Petition filed under Article 227 of Constitution of India, to set aside the order passed in I.A.No.33 of 2018 in O.S.No.227 of 2010 dated 22.11.2019 on the file of Additional District Munsif Cum Judicial Magistrate, Vedasanthur, Dindigul District and allow this Civil Revision Petition.

For Petitioner : Mr.S.A.Ajmalkhan
For Respondent : No appearance

ORDER

This Civil Revision Petition has been filed to set aside the order passed in I.A.No.33 of 2018 in O.S.No.227 of 2010 dated 22.11.2019 on the file of Additional District Munsif Cum Judicial Magistrate, Vedasanthur, Dindigul District and allow this Civil Revision Petition.

2.The respondent herein as plaintiff filed the suit in O.S.No.227 of 2010 for declaration, recovery of possession and permanent injunction against the petitioner herein. The averment of the respondent in the plaint is that he and his brother have purchased the property in Survey No.525 /B2 to the extent of 88 1/3 cents of land in middle portion out of 2 acres 65 cents. After sometime, the respondent's brother Ganesan executed a released deed and relinquished his share in the property. In the absence of the respondent, the petitioner/defendant encroached the suit property and is residing there. Thereafter, the respondent requested the petitioner to vacate the suit property. Further the respondent finding that the petitioner made some renovation work in the suit property, filed the suit for declaration and for permanent injunction. According to the petitioner, the respondent purchased the property situated in Survey No.526/2B. But, the



respondent claimed the property as if it comes under Survey No.525/B2.

3. The survey particulars in the petition averred by the petitioner and the survey numbers in the order copy are entirely different. The learned counsel for the petitioner would state that it is suffice if the suit property is surveyed as per the document of the plaintiff itself, who is the respondent herein. Hence, the respondent filed an Interlocutory Application in I.A.No.361 of 2010 for appointment of Advocate Commissioner where the leaned Judge has appointed the Advocate Commissioner. After inspecting the suit property, the Advocate Commissioner filed his report on 11.08.2010. Thereafter, when the case was posted for trial on 23.08.2018, the petitioner contended that the Advocate Commissioner has mentioned in his report that entire 88 1/3 cents could not measured due to non availability of four boundaries and has also further stated that the entire 88 1/3 cents is not the suit property and hence, the same need not be measured. The petitioner not satisfied wanted the re-issuance of the commission warrant to the same advocate to inspect the suit property once again with the help of VAO, Surveyor and with reference to the documents and survey records which was dismissed, against which, the present civil revision petition has been filed.

4. Though notice has been served as early as on 28.12.2020 itself, the respondent has neither appeared by himself nor through counsel.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. Perusal of record shows that the Advocate Commissioner did not identify the four boundaries and failed to mentioned it, hence, the petitioner filed I.A.No.33 of 2018 to reissue the commission warrant to the same Advocate Commissioner to inspect the suit property. Since there is a dispute in the very Survey Number itself, a prima facie case is made out. Therefore, to meet the ends of justice, it would be appropriate to direct the Court below to reissue the commission warrant. Accordingly, the learned Additional District Munsif Cum Judicial Magistrate, Veda sandur, is directed to reissue the commission warrant to the same Advocate Commissioner to inspect the suit property. The remuneration which has been fixed earlier by the Court below for Appointment of Advocate Commissioner shall be paid to the Advocate Commissioner for re-issuance of commission warrant. The Advocate Commissioner shall measure the suit property based on the plaint document itself with the help of the surveyor in the presence of the VAO and file a report.



7. With the above direction, the order passed in I.A.No.33 of 2018 is set aside and this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

msa/pkn

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

1. The Additional District Munsif Cum
Judicial Magistrate, Vedasanthur,
Dindigul District .

2. The Record Keeper-2 copies
V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr.S.A.AJMAL KHAN, Advocate (SR-7086[F] dated 25/02/2021)

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KM (25.03.2021) 3P 5C