



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2021

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (MD) No.1133 of 2020

and

C.M.P (MD) .No.7269 of 2020

N.Nehrudoss

... Petitioner/Petitioner/Petitioner/
3rd Defendant

-Vs-

R.Vanaja

...Respondent/Respondent/
Respondent/Plaintiff

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in unnumbered I.A.No.-- of 2020 in I.A.No.2 of 2019 in O.S.No.96 of 2014 by the District Munsif Court, Palani, dated 24.11.2020.

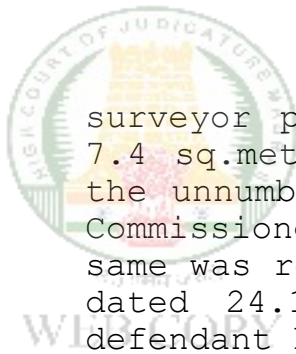
For Petitioner : Mr.D.Senthil, Advocate
For Respondent : Mr.M.P.Senthil, Advocate

O R D E R

This Civil Revision Petition has been filed to set aside the fair and decreetal order made in unnumbered I.A.No.-- of 2020 in I.A.No.2 of 2019 in O.S.No.96 of 2014, dated 24.11.2020, on the file of the District Munsif Court, Palani.

2. The revision petitioner is the third defendant and the respondent is the plaintiff in the suit in O.S.No.96 of 2014.

3. The case in brief is that the respondent/plaintiff has filed a suit in O.S.No.96 of 2014 on the file of the District Munsif Court, Palani, against the third defendant and two others seeking for the relief of declaration that the suit schedule property mentioned as "ABCD" in the plaint is belongs to her; for a mandatory injunction directing the defendants to remove the construction put up by them; and for costs. The petitioner/third defendant has filed an interlocutory application in I.A.No.2 of 2020 in O.S.No.96 of 2014 to appoint a Commissioner to measure the suit property and the same was allowed on 27.08.2019 and the Commissioner filed the report and plan on 18.11.2019. It is pertinent to note that, earlier, in I.A.No.210 of 2014, a Commissioner was appointed and he was also filed his report on 22.04.2016. In both the Commissioner report and



surveyor plan, it was mentioned that the defendant had encroached 7.4 sq. meter land. Now, again the petitioner/third defendant filed the unnumbered interlocutory application praying for the revisit of Commissioner with the aid of the Dindigul District Surveyor and the same was rejected by the learned District Munsif, Palani, vide order dated 24.11.2020. Aggrieved over the same, the petitioner/third defendant has filed the present Civil Revision Petition.

4. The learned counsel for the revision petitioner/third defendant would submit that the Court below failed to consider that the petitioner was arrayed as third defendant only on 03.11.2017 and subsequently, filed his written statement only during May, 2018. He would further submit that there is no intention to drag the case and would pray to allow the present civil revision petition.

5. The learned Counsel for the respondent/plaintiff raised serious objections stating that the petitioner/third defendant has not utilized his opportunity and after the lapse of one year, now at the stage of argument, he filed the said interlocutory application. He further submitted that the Court below had already reserved the case for judgment on 06.02.2020 and hence, the present civil revision petition is liable to be dismissed.

6. Heard the learned Counsel for the petitioner as well as the respondent and perused the materials placed before this Court.

7. The present revision petition has been filed against the order passed by the learned Judge, dismissing the application seeking for an appointment of Commissioner, for the revisit and to measure the suit schedule property along with the Dindigul District Surveyor. The learned Judge has clearly narrated in his order, the manner in which the petitioner has protracted the proceedings and the relevant portion is extracted hereunder:-

"...On perusal of the records, it reveals that the commissioner was appointed in I.A.210/2014 and the commissioner had filed his 1st report on 22.04.2016. Later the 3rd defendant/the petitioner had filed I.A.2/2019 for revisit of the commissioner and to measure the suit property with the aid of Head Surveyor and the same was allowed by this court on 27.08.2019 and the same commissioner in I.A.210/2014 was appointed and he filed the report and plan on 18.11.2019. In both the commissioner report and Surveyor plan it was mentioned that the defendant had encroached 7.4 sq. meter. Now the petitioner has filed this petition after the lapse of 1 year and at the stage of the argument. Here this court wants to notify that already this case was reserved for judgment on 06.02.2020 in the meantime this petitioner has filed reopen petition and reopened the case for defendant's side evidence. Hence on considering the above



facts, this court felt that the petitioner has filed this petition with an intention to delay the proceedings and he had not approached the court with clean hands. If this petition was numbered, then the petitioner will file once again another commissioner petition, scrap petition, reopen petition which will lead to endless proceeding...."

8. On a reading of the above order, it is clear that already two reports were filed by the commissioner in respect of the suit schedule property stating that the petitioner/third defendant had encroached 7.4 sq. meter land. Thereafter, when the case was reserved for Judgment on 06.02.2020, the petitioner has filed a re-open petition and the case was reopened for defendant side evidence and after a lapse of one year at the stage of argument, this petition is filed and finding that the above petition has been filed to protract the proceedings, the learned Judge has dismissed the same. I do not find any infirmity in the order and therefore, the interference of this Court is not necessary.

9. Accordingly, the present Civil Revision Petition stands dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

/TRUE COPY/

/ /2021
Sub Assistant Registrar

To

1. The District Munsif,
Palani, Dindigul District.

2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-134[F] dated 05/01/2021)

C.R.P. (MD) No.1133 of 2020
05.01.2021

pkn
JM/19.01.2021/3P/5C