



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2021

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P(PD) (MD) Nos. 2007 and 2008 of 2014

and

M..P(MD) No.1 of 2014 in

C.R.P(PD) (MD) No. 2007 of 2014

Vijayakumar

...Petitioner in both petitions

Vs.

1. Pushpam

2. Shiny

...Respondents in both petitions

PRAYER in CRP(MD) No. 2007 of 2014 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.07.2014 passed in I.A.No.48 of 2014 in A.S.No.50 of 2013 on the file of the Sub Court, Padmanabhapuram.

PRAYER in CRP(MD) No. 2008 of 2014 : Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 30.07.2014 passed in I.A.No.49 of 2014 in A.S.No.50 of 2013 on the file of the Sub Court, Padmanabhapuram.

(In both petitions)

For Petitioner : Mr.M.R.Srinivasan

For Respondent : Mr.V.M.Balamohan Thambi

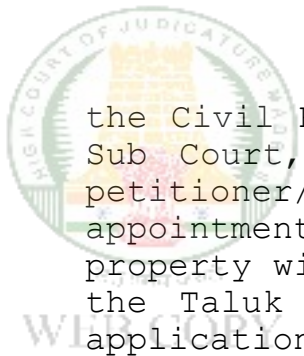
O R D E R

The Civil Revision Petition in CRP(MD) No. 2007 of 2014 has been filed against the order dismissing the petition seeking appointment of Advocate Commissioner at the appellate Stage

2.The Civil Revision Petition in CRP(MD) No. 2008 of 2014 is filed against the order in I.A.No. 49 of 2014 dismissing the petition filed seeking to file additional document at the appellate stage.

3.The brief facts of the case are as follows:

The respondent/plaintiff has filed O.S.No.25 of 2011 on the file of the District Munisf Court, Padmanabhapuram seeking for declaration of title and possession of suit property and injunction and decree to set aside the sale deed dated 06.08.1987 registered as document No.1826 at the office of the Sub Registrar, Thuckalay in favour of the defendant with regard to the property mentioned as item no.2 in the sale deed. The suit was decreed in favour of the plaintiff by an order dated 30.09.2013 Aggrieved by the judgment and decree the defendants who are the petitioners in



the Civil Revision petition have filed A.S.No.50 of 2013 before the Sub Court, Padmanapuram. During the pendency of the appeal the petitioner/ appellant had filed IA NO.49 of 2014 seeking for appointment of Advocate Commissioner to locate the plaint scheduled property with reference to the resurvey of the land with the help of the Taluk Surveyor. The Appellate Court had dismissed both the application, against which the present revisions have been filed.

4.The learned counsel for the petitioner would submit that even in the written statement filed in the suit the petitioner had stated that the extent of the suit schedule property is 14 cents in Re. Sy.No.400/10-A1 (Old.Sy.No.1308 and A3 part) of Veeyannoor Village. But the actual resurvey number of the suit property is Re.Sy.No. 400/10 B of Veeyannoor village and thereby since the extent and boundaries were not clear the petitioner has filed petition seeking for appointment of advocate commissioner and further the petitioner had also filed a petition seeking permission to adduce additional evidence by marking four documents namely:

1. Patta transfer order in favour of the appellant dated 05.07.2001

2. Re-survey plan with regard to re-survey No.400 of Veeyennoor village (Now in Kannanoor)

3. Xerox copy of FIR in Crime No.893/97 of Thuckalay Police dated 27.09.1997.

4. Xerox copy of plaint of O.S.No.208 of 1997 of District Munsif Court, Padmanabhapuram,

whereas the appellate Court without taking into consideration and relevancy and necessity of appointment of advocate commissioner and the relevancy of marking the additional document had dismissed the same, against which the revisions have been filed.

5.The learned counsel for the respondent would submit that the prayer in the suit itself is to set aside the Sale Deed dated 03.06.1987, which was registered as document No. 1826 at the office of the Sub Registrar, Thuckalay with regard to the property mentioned as item no. 2 in the sale deed and the dispute in the suit was not in respect of location and lie or measurement of the property. The appellate Court rightly finding that the appointment of Advocate Commissioner was not necessary for the purpose of elucidating the matter in dispute, had rightly dismissed the same. Further the petitioner has sought to mark four documents, the first document namely the patta transfer order in favour of the appellant dated 05.07.2001 was marked as Ex.B.2 before the Trial court, further resurvey plan with regard to the Resurvey no. 400 of Veeyannoor village was marked as second document and the appellate court finding the identity or measurement was not in dispute had rejected the same and as far as the fourth document namely xerox copy of the plaint in O.S.No.208/1997 on the file of the District



Munsif Court Padamanpuram is concerned it was marked before the Trial Court as Ex.A.4 as per judgment and decree as Ex.A.3 and A4 and as far xerox copy of FIR is concerned, in Crime No. 893 of 1997 is concerned it is an admitted fact the husband of the appellant is missing and the trial Court rightly finding that those documents were not necessary to be marked as additional document has rightly dismissed the same. He would further submit that the orders passed by the appellate Court needs no interference and thereby he would pray for the dismissal of the revision petition.

6.Heard the learned counsel appearing on either side and perused the materials available on record.

7.The suit in O.S.No.25 of 2011 on the file of the District Munsif Court, Padmanapuram has been filed only to set aside the sale deed dated 06.08.1987 . As pointed out by the learned counsel for the respondent, there is no dispute with regard to the schedule, boundaries or measurement of the properties covered under sale deed dated 06.08.1987. The Trial Court rightly finding that there is no justification for ordering of appointment of Advocate Commissioner, had dismissed the same. Further finding the document sought to be marked as additional documents have already been marked before the trial court, The Appellate Court had rightly dismissed the petition. This Court does not find any error or infirmity in the order passed by the trial Court.

8.In the result, the Civil Revision Petitions stand dismissed. No costs. Consequently connected miscellaneous petition is also closed. Since the first appeal is of the year 2013 a direction is issued to the Trial Court to dispose of the appeal as expeditiously as possible preferably within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-II)

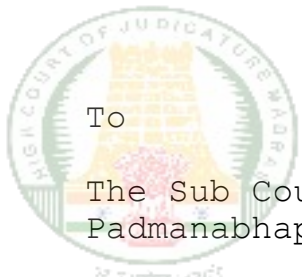
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Sub Assistant Registrar(CS)

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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 Sub Court,
Padmanabhapuram.

+1 CC to M/s.R.NANDA KUMAR, Advocate (SR-31631[F] dated 07/10/2021)

+1 CC to M/s.V.M.BALAMOZHANTHAMBIL, Advocate (SR-31838[F]
dated 08/10/2021)

C.R.P(PD) (MD) Nos. 2007 and 2008 of 2014

and

M..P(MD) No.1 of 2014

07.10.2021

DJ(CO)

GC/PM(17.11.2021) 4P 4C