



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2021

CORAM :

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

C.R.P. (MD) No.2265 of 2014

and

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

Chinnasamy

... Petitioner/First Respondent/
First Respondent

vs.

1.R.Shanmugam

2.V.R.Subramani

3.V.R.Chidambaram

4.S.Nallammal

5.Banu @ Parameswari
Marayee (Died)

6.Kasi

7.Nallasamy

8.K.Velusamy

9.Thulasimani

10.Ravikumar

11.K.M.Babu

12.Rajeswari

13.Venkateswari

14.Rajarathinam (died)
Sivakumar

15.Rani

16.S.Rajasekaran



17.Kamala
18.P.Prema

19.Akilandeswari

... Respondents/Petitioners & Respondents/
Appellants & Respondents

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside fair and executable order dated 17.06.2014 passed in I.A.No.16 of 2014 in A.S.No.87 of 2012 on the file of the learned Principal Subordinate Judge, Karur.

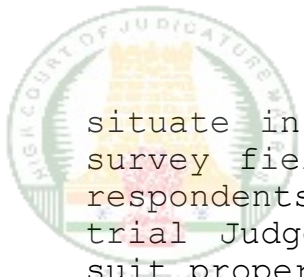
For Petitioner : Mr.J.Barathan
For R1 to R5 : Mr.K.Suresh for
Mr.B.Saravanan
For R8 : No appearance

ORDER

The plaintiff, who is the 1st respondent in the 1st appeal and the miscellaneous petition, which is the subject matter of the revision before this Court, is the revision petitioner before this Court. He has challenged the order passed by the learned Principal Subordinate Judge, Karur in I.A.No.16 of 2014 in A.S.No.87 of 2012 in and by which the learned Judge has allowed the application for appointing an Advocate Commissioner to measure the entire suit survey field with the assistance of the Surveyor and the Village Administrative Officer.

2.The facts in brief are as follows:-

3.The petitioner herein had filed a suit against the respondents 1 to 5 herein and others for demarcating the western boundary of the suit 'A' schedule property, which belongs to him, declaring that the 'C' and 'D' schedule properties belong to him absolutely and consequentially granting permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit properties. The defendants/respondents herein have filed a written statement denying the petitioner's case. The trial Court after a detailed contest found that the 'D' schedule property formed part of the 'C' schedule property and declared the plaintiff's right to the suit 'C' and 'D' schedule properties and granted an order of permanent injunction. The respondents 1 to 5 herein were also directed to hand over the possession of 8 cents of land demarcated in the Commissioner's plan, Ex.C2. Aggrieved by this judgment and decree, the respondents 1 to 5 herein had filed A.S.No.87 of 2012 on the file of the learned Principal Subordinate Judge, Karur. The primary ground on which this appeal has been filed is that the entire extent of the Survey Field No.359, totally measuring 15.28 acres, has not been measured and only upon its measurements, it would be possible to identify the suit property as the suit property and the defendants' property are



situate in the very same survey field and the extent of the said survey field is 6 acres and 61 cents. Therefore, the case of the respondents 1 to 5 is that without a proper demarcation, the learned trial Judge had erred in declaring the petitioners' right to the suit property.

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4. Pending the suit, the appellants/respondents 1 to 5 herein had come forward with an application for appointing an Advocate Commissioner to measure the entire extent of the suit survey field with the assistance of a Firka Surveyor and the Village Administrative Officer. In the affidavit filed in support of the said petition, the respondents 1 to 5 have stated that without measuring the entire suit survey field, the alleged encroachment could not be identified and further, the petitioners herein had taken out a totally un-sustainable stand that the suit survey number consists of many houses and therefore, it can not be measured. Such a stand as pointed out is not sustainable, since the plaintiff has come forward with the specific case that the suit property belongs to them and they are entitled to an injunction. Therefore, the respondents 1 to 5 emphasis the need for appointing an Advocate Commissioner to measure the properties. The petitioner had filed a very detailed counter stating that the Advocate Commissioner earlier appointed by the trial Court had inspected and measured the properties and filed his report with the surveyor's plan. The Advocate Commissioner in his report has stated that the measurements had been taken from the survey stone, which is marked as X.1. The defendants had not raised any objection to the same and the present application was unnecessary and made with an intent to protract the proceedings. They had further stated that the respondents 1 to 5 have not even challenged the report by filing a revision or by filing their objection.

5. The response to the above contention was that the Advocate Commissioner's report and plan were taken only with respect to the petitioner's property, whereas, the measurement of the properties belonging to the respondents 1 to 5 had not been taken. Only if both the properties are measured, the Court could come to a correct conclusion to find out as to whether there is an encroachment on the side of the respondents 1 to 5 herein. The learned Subordinate Judge, Karur allowed the above application and aggrieved by the same, the petitioner/plaintiff is before this Court.

6. The main objection raised by the learned counsel appearing for the petitioner was that already there was an Advocate Commissioner's report before the Court and this report has been filed by the Advocate Commissioner after inspecting the property and taking measurements with the help of Firka Surveyor. At that juncture, the respondents 1 to 5 herein had not objected or given a memo of instructions that their property also need to be measured and therefore, the order of the learned Judge is erroneous and is



liable to be set aside.

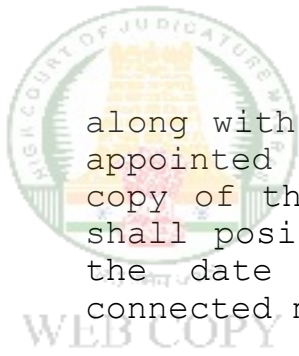
7.Mr.Suresh, learned counsel for Mr.B.Saravanan, learned counsel appearing for the respondents 1 to 5 would submit that even before the trial Court, the respondents 1 to 5 had taken out an application in I.A.No.748 of 2008 seeking to have the entire extent in S.F.No.359 measured so as to appreciate the fact that the respondents 1 to 5 have not encroached into any portion as alleged by the petitioner. He would further submit that considering the fact that one of the prayers is for delivery of possession of the portion alleged to have been encroached, there is a necessity for identifying the properties of both the petitioner as well as the respondents 1 to 5 with their measurements. Therefore, no exception can be taken the order now passed.

8.Heard the learned counsels on either side.

9.Admittedly, the suit is one for demarcating the western boundaries of the 'A' schedule property, which is the entire property belonging to the plaintiff and to declare that the 'C' and 'D' schedule properties, which is a part of the 'A' schedule property is the absolute property of the plaintiff and for a consequential injunction. The petitioner has also sought to have the 'D' schedule property delivered to him as it is the portion of the plaintiff's property, which is alleged to have been encroached by the defendants. The defense to this application is that the measurement of the entire extent of survey number 359 had not been taken by the Advocate Commissioner. The defendants had not denied the fact that the plaintiff was entitled to an extent of 6.61 acres. However, it is their contention that there is no encroachment in the plaintiff's extent of 6.61 acres. Therefore, a need arises to verify the extent of the properties in this survey number, namely, Survey Field No.359 in order to arrive at a conclusion as to whether there is any encroachment into the property of the plaintiff measuring an extent of 6.61 acres. The defense was also that all the parties, who have an interest in the suit property have not been impleaded as party/defendants. That apart, the Advocate Commissioner had not shown the demarcation of the eastern and western boundaries of the suit property and without demarcating the same, it is impossible to come to the conclusion as to whether there has been an encroachment.

10.It is informed by the learned counsel for the respondents 1 to 5 that the earlier Advocate Commissioner has now become a Judicial Officer and therefore, the warrant has to be issued to a new Advocate Commissioner.

11.In these circumstances, the Civil Revision Petition stands disposed of directing the learned Principal Subordinate Judge, Karur to appoint a new Advocate Commissioner to measure the total extent compromised in suit survey number and to submit his report on file



along with said Ex.C1 and Ex.C2. The Advocate Commissioner shall be appointed within a period of 1 week from the date of receipt of a copy of this order or its production and the Advocate Commissioner shall positively submit his report within a period of 2 weeks from the date of receipt of the warrant. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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To

The Principal Subordinate Judge,
Karur.

+1 CC to M/s.T.R. JEYAPALAM, Advocate(SR-37352[F] dated
06/12/2021)

C.R.P. (MD) No.2265 of 2014
03.12.2021

MGJ(31.12.2021) 5P 3C