



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

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THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (PD) (MD) No.1711 of 2021

and

C.M.P (MD) No.9164 of 2021

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The Commissioner,
Municipal Office,
Ramanathapuram

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

Vs.

1.S.Ayesha Ammal

... 1st Respondent/
Petitioner/plaintiff

2.The Tashidar
Ramanathapuram Taluk,
Ramanathapuram.

3.The State of Tamil Nadu,
Represented by its District Collector,
Ramanathapuram.

... Respondent No.2 & 3/
Respondents 1 & 2 / Defendants 1 & 2

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to revise and set aside the fair and executable order passed in I.A.No.51 of 2019 in O.S.No.144 of 2014 dated 04.02.2021 on the file of the District Munsif Court, Ramanathapuram.

For Petitioner : Mr.A.Kanan
For Respondents 2 & 3 : Mr.K.S.Selvaganesh

ORDER

The third defendant is before this Court invoking the superintending jurisdiction of this Court under Article 227 of Constitution of India challenging the order passed in I.A.No.51 of 2019 in O.S.No.144 of 2014 by the District Munsif, Ramanathapuram. The impugned order relates to the appointment of an Advocate Commissioner to note down the physical features of the suit schedule property and prepare a plan thereto.

2.The facts in brief necessary for disposing of the civil revision petition is herein below narrated:-

2.1.The first respondent/plaintiff had filed a suit in O.S.No.144 of 2014 seeking a bare injunction restraining the revision petitioner/ 3rd defendant and respondents 2 and 3/the defendants 1 and 2 from obstructing the peaceful possession and

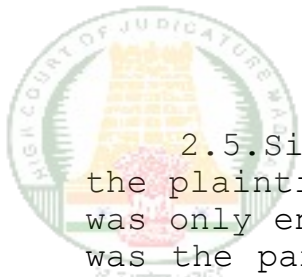


enjoyment of the suit property by the plaintiff. The plaintiff would contend that the suit property and the area surrounding it, originally belonged to the Maharani of Ramanathapuram Srimathi D.Indiradevi and her minor children. By a registered sale deed dated 03.03.1984, the plaintiff had purchased the property to an extent of 8065 sq fts, which is equal to an extent of 18.5 cents, for a valuable consideration from the Maharani, .

2.2.On her purchase, the plaintiff had put up a compound wall on all four sides after getting necessary permission from the Municipality. Thereafter, under the Updating Registry Scheme, the plaintiff was granted joint patta along with R.Chidambaranathadurai by the order of the Tashdilar dated 24.02.1986. The order dated 03.12.1991 of the District Revenue Officer, Ramanathapuram, instead of showing an extent of 18 ½ cents as belonging to the plaintiff in Survey No.317/1, T.S.No.19, showed the total extent as 10 ½ cents. The order dated 03.12.1991 was totally erroneous, since the plaintiff has put up the compound wall as per the patta granted to her in the year 1984 and in enjoyment of an extent of 18 ½ cents.

2.3.The plaintiff would further submit that after getting due approval, she had constructed a lodge in the name and style of S.A.Lodge in the said property. To the east-west of the suit property, the land of the Rajaram is situated. While so, on 23.08.2014, the third defendant came to the suit property and threatened the plaintiff that he would demolish the compound wall, with a very great difficulty, the plaintiff prevented such an action. However, the third defendant had gone back threatening to do so. Since the third defendant is continuing with the threat, the plaintiff is left with no other alternative, except to approach this Court.

2.4.The written statement was filed by the petitioner, in which the third defendant would deny the claim of the plaintiff. The third defendant feigned ignorance about the earlier orders passed by the Revenue Authorities in the year 1984 as well as in the year 1991. The third defendant would further submit that the plaintiff has not challenged the order passed by the District Revenue Officer reducing her enjoyment to an extent of 10 ½ cents and contended that this order has not been challenged by the plaintiff. The plaintiff had also obtained an interim order of injunction despite which the third defendant attempted once again to demolish the compound wall constraining the plaintiff to file writ appeal in W.A.No.1116 of 1999. The writ appeal was disposed of on 18.01.2005 stating that the appellant namely the plaintiff had to approach the Civil Court. The defendant would further contend that although such a direction was given, the plaintiff had not moved any application and therefore, the suit filed without seeking the relief of declaration of title, was not maintainable and it is liable to be dismissed.



2.5. Since the petitioner was insistent on denying the right of the plaintiff to the property and also contending that the plaintiff was only entitled to an extent of 10.05 cents and the remaining land was the panchayat board land and Mangammal Chathiram Poramboke etc, the plaintiff had filed I.A.No.51 of 2019 seeking for appointment of Advocate Commissioner to inspect the suit property, note down its physical features and submit a report along with the plan.

2.6. The petitioner herein had resisted the same by *inter alia* contending that in a suit for bare injunction, appointment of an Advocate Commissioner was anathema and that the plaintiff cannot use Advocate Commissioner to collect the evidence on their behalf.

2.7. The learned District Munsif, Ramanathapuram, on considering the petition and arguments of both sides, allowed the application. The learned District Munsif was compelled into allowing the application, since the plaintiff had contended that she was in enjoyment of an extent of 18.05 cents which was totally surrounded by the compound wall with the lodge running therein, whereas the defendant would submit that only an extent of 10.05 cents was in their enjoyment with the rest of the land being the land of the Panchayat board and the Mangamal Chathiram poramboke. Challenging the said order, the petitioner is before this Court.

3. When the matter was listed for admission Mr.A.Kannan, learned counsel appearing on behalf of the petitioner, would vehemently contend that there cannot be an Advocate Commissioner appointed to collect the evidence on behalf of the plaintiff. The plaintiff has to succeed or loose only on the basis of the documents submitted by her. He would further submit that the plaintiff was only in enjoyment of an extent of 10.05 cents and that there was no compound wall around the property as the same has already been demolished. He would rely upon the judgment of this Court reported in **(2006) 5 CTC 178** reported as **T.K.Krishnamurthy vs Tamil Nadu Water and Drainage Board** in support of his arguments that the Advocate Commissioner's report alone can never be the basis for deciding the suit and the Commissioner should not be appointed to gather evidence to prove the case of the parties. The other judgment which has been relied upon by the learned counsel is the judgment reported in **(2020) 206 AIC 697** reported as **S.Anand and others vs A.Jeyabalan and others**. This judgment was also relied upon for the very same proposition that the Commissioner cannot be appointed to find out as to who is in possession of the property and also to collect evidence.

4. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents 2 and 3 and also perused the records.



5.The first respondent has come forward with the case that the suit property had been purchased by her in the year 1984 and in the very same year she had put up a compound wall after obtaining necessary permission and approval. She would submit that though she had been granted permission to put up the compound wall around an extent of 8065 sq.fts, however in the Updating Registry Scheme, there appears to be an anomaly in the extent shown as belonging to the first respondent. The petitioner is trying to take advantage of this and in the process, he has been interfering with her peaceful possession of the suit property. The first respondent has sought to appoint the Advocate Commissioner, since the petitioner has taken a defence that the suit property is not surrounded by the compound wall as the same has been demolished and that within this extent of 8065 sq.fts Mangammal Chathiram Poramboke and the Panchayat Board lands were situated. The existence or otherwise of the compound wall can be verified by the Advocate Commissioner. The case of the plaintiff is that she is in enjoyment of the suit property which is surrounded by a compound wall. Therefore, the appointment of an Advocate Commissioner appears would to a very great extent help the Court is understanding the contentions of either side.

6.Even in the judgments relied upon by the petitioner particularly the judgment reported in **(2020) 206 AIC 697**, the learned Judge had opined that even in a suit for bare injunction, an advocate commissioner can be appointed as there is no complete bar for a Court to appoint an Advocate Commissioner, but such an appointment can be only in cases where it is necessary to localise the property, when there is a dispute regarding boundaries or there is an attempt made to alter the physical features. In the instant case, though the first respondent would contend that the entire suit property is surrounded by the compound wall and there is an extent of 8065 sq.fts (18.05 cents) within the compounded area, the petitioner would contend that there is no compound wall and that the first respondent is only enjoyment of 10 ½ cents of land.

7.Therefore, I do not find any reason to interfere with the order of the learned District Munsif, Ramanathapuram. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

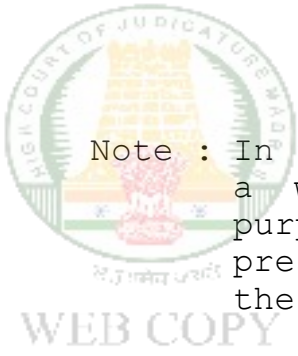
Assistant Registrar (CS-III)

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/ /2021

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:-

1. The District Munsif,
Ramanthapuram.
- 2.The Tashidar
Ramanathapuram Taluk,
Ramanathapuram.
- 3.The State of Tamil Nadu,
Represented by its District Collector,
Ramanathapuram.

+1 CC to M/s.SPL.GP (SR-33962[F] dated 10/11/2021)

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