



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.12.2021

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P. (PD) (MD) No.1997 of 2021

and

C.M.P. (MD) No.10747 of 2021

and

Caveat No.1636 of 2021

Chellam Asari (Died)

- 1.Pappathiyammal
- 2.Pichaiammal
- 3.Muthuramalingam
- 4.Thanushkodi

.. Petitioners/Petitioners/
Plaintiffs

-vs-

Chellaiah Konar (Died)

- 1.Mookkaiah Konar
- 2.Karuppusamy
- 3.Pandi

Muthumari (Died)

- 4.Rakku

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 27.09.2021 made in I.A.No.3 of 2020 in O.S.No.281 of 2004 on the file of Additional District Munsif, Aruppukottai.

For Petitioners : Mr.T.Antony Arulraj

For Respondents : Mr.V.Sasikumar for Cevetator

ORDER

The plaintiffs, whose application to amend the plaint in I.A.No.3 of 2020 in O.S.No.281 of 2004 had been dismissed by the learned Additional District Munsif, Aruppukottai, by order dated 27.09.2021, are the revision petitioners before this Court.



2.The suit in O.S.No.281 of 2004 was originally filed by one Chellam Asari. Pending the suit, the said Chellam Asari died and his legal representatives were impleaded as plaintiffs 2 to 5.

3.Pending the suit, the 1st defendant died and his legal representatives were impleaded as defendants 3 to 6.

4.The facts in brief are as follows:-

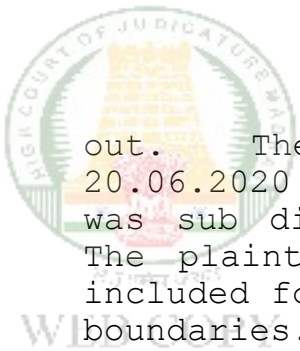
4.1.The petitioners had filed the suit in O.S.No.281 of 2004 on the file of the District Munsif, Aruppukottai, for the relief of declaration and consequential injunction restraining the defendants, their men and agents from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the suit property. The suit schedule property consisted of two items.

5.It is the case of the plaintiffs that the suit 1st item of property is a property measuring an extent of 2 acres and 63 cents situate in S.No.8/2 in Thenur Village described with reference to new UDR survey. Similarly, the 2nd item of suit property is also stated to be a property in S.No.8/2 measuring an extent of 38 cents corresponding to S.No.8/2C as per UDR survey.

6.It is the further case of the plaintiffs that the suit property originally belonged to one Karuppannakonar and that the same was purchased by Chellam Asari, the original plaintiff under a registered Sale Deed dated 17.11.1964. Apart from describing the property as per UDR survey, the suit property was described as per the recital in the Sale Deed.

7.The 1st defendant filed a written statement admitting that the suit property originally belonged to Karuppannakonar and that patta was granted in favour of Karuppannakonar during settlement. It was stated by the defendants that the suit property in S.No.8/2 was purchased by the 1st defendant from the said Karuppannakonar by a registered Sale Deed dated 18.01.1961. It was further stated by the 1st defendant that he re-conveyed a portion of the property purchased by him viz., an extent of 1 acres and 72 cents in favour of Karuppannakonar by another document dated 19.09.1961. Therefore, the 1st defendant would submit that he is entitled to the property viz., an extent of 1 acre and 44 cents in S.No.8/2. He would contend that he is in possession of the said extent of land and that the property re-conveyed by him falls in S.Nos.8/2A, 8/2A5 and 8/2C as per re-survey. When D.W.1 was in the box for his cross examination, the petitioners came forward with the impugned application in I.A.No.3 of 2020 to amend the plaint.

8.The petitioners would contend that though their father had purchased old S.Nos.8/1 and 8/2, S.No.8/2 and its sub divisions were mentioned in the suit schedule property, but S.No.8/1 was missed



out. The defendants had created a fraudulent settlement on 20.06.2020 and had obtained patta in respect of S.No.8/1. S.No.8/1 was sub divided into S.Nos.8/1A1, 8/1A2, 8/1A3, 8/1C1 and 8/1C2. The plaintiffs would, therefore, submit that S.No.8/1 had to be included for a complete judgment and there was no discrepancy in the boundaries.

9.The defendants had resisted the above application contending that the application is moved at the time when D.W.1 was in the box for cross examination and it has been made only with the intent of protracting the proceedings. They would further contend that the plaintiffs have been filing one application after the other. In fact, earlier, amendments have also been carried out and at no point of time, this amendment had been sought for by the plaintiffs. Therefore, they sought for dismissal of the application.

10.The learned Additional District Munsif, Aruppukottai, after hearing the parties was pleased to dismiss the said application. Challenging the same, the plaintiffs are before this Court.

11.Heard the learned counsel for the parties and perused the records.

12.A mere perusal of the plaint that has been enclosed in the typed set of papers would indicate that two applications have been earlier moved for amending the plaint one in I.A.No.105 of 2012 and another in I.A.No.731 of 2017. The suit is of the year 2004 and D.W.1 is in the box for cross examination. The conduct of the plaintiffs appears to be only to protract the proceedings. They have been filing one application after the another. In fact, an application was moved for appointment of an Advocate Commissioner in I.A.No.187 of 2016, which was allowed by the trial court by appointing an Advocate Commissioner to note down the physical features of the suit property. The Advocate Commissioner appointed had filed his report on 13.04.2017 along with plan. The revision petitioners filed objections to the report of the Advocate Commissioner stating that the Additional Director of Survey was not present during the inspection. Though objections were filed in the year 2017, the revision petitioners filed another application in I.A.No.2 of 2019 to re-issue the warrant to the same Advocate Commissioner to inspect the property with the help of the Additional Director of Survey. The said application was dismissed by the trial court on the ground that the issues framed in the suit are required to be decided on the basis of documents and not on the basis of Advocate Commissioner's report. Challenging the same, the revision petitioners had filed C.R.P.(PD) (MD) No.528 of 2020. A detailed order has been passed by this Court on 30.09.2020 dismissing the said Civil Revision Petition. The present Interlocutory Application has been filed immediately thereafter. This Court is of the view that the petition lacks bona fides and is liable to be dismissed.



13. In the result, this Civil Revision Petition is dismissed and the order dated 27.09.2021, passed by the learned Additional District Munsif, Aruppukottai, in I.A.No.3 of 2020 in O.S.No.281 of 2004 is confirmed. Considering the fact that D.W.1 is in the box and also the fact that the suit is of the year, 2004, a direction is issued to the learned Additional District Munsif, Aruppukottai, to dispose of the suit within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

abr

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 Additional District Munsif,
Aruppukottai.

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-38980[F] dated 16/12/2021)
C.R.P. (PD) (MD) No.1997 of 2021
Dated: 14.12.2021

MGJ(25.01.2022) 4P 3C