



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P (MD) No.2093 of 2021

and

C.M.P(MD) No.11117 of 2021

WEB COPY

Karuppasamy

... Appellant/Petitioner

Vs.

Ramasamy Nadar (Died)

1.The Tahsildhar,
Vedasandur Taluk,
Dindigul District.

2.The District Collector,
Collectorate,
Dindigul District.

3.R.Muniyappan

4.R.Yelumalai

5.Venkatesan

... Respondents/Respondents

PRAYER:- Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records relating to the fair order and decreetal order dated 15.09.2021 made in I.A.No.19 of 2018 in A.S.No.49 of 2015 on the file of the learned Additional District Judge, Dindigul and set aside the same by allowing this civil revision petition.

For Petitioner : Mr.AL.Ganthimathi

ORDER

The petitioner/ appellant in A.S.No.49 of 2015 is the revision petitioner before this Court challenging the order passed by the learned Additional District Judge, Dindigul in I.A.No.19 of 2018 whereby the learned Judge had rejected the petition filed for appointing an Advocate Commissioner to note down the physical features of the suit property, measure the same and file the report and plan.

2.The brief facts, which are necessary to dispose of this petition, are as follows:-

(i) The petitioner, who is the plaintiff in O.S.No.143 of 2012 on the file of the Sub Court, Vedasanthur (earlier O.S.No.18 of 2008 on the file of the Additional Sub Court, Dindigul) had filed the suit for a declaration that the suit third item of property belongs to the plaintiff, for a mandatory injunction directing the removal of the encroachments thereon and to hand over the possession of the



third item of property to the plaintiff, to declare that the patta granted and the sub division made in respect of the third item in favour of the first defendant, is null and void and also for an injunction restraining the plaintiff's peaceful possession and enjoyment of the second item of property by the defendants 4, 5 and 6. The suit was ultimately dismissed by judgment and decree dated 12.06.2015. Challenging the same, the revision petitioner has filed A.S.No.49 of 2015 on the file of the Additional District Court, Dindigul. Pending the appeal, the plaintiff had filed the impugned application.

(ii) In the affidavit filed in support of the said application, the plaintiff would contend that in the suit before the trial Court, the defendants have not filed any documents to show the property that belonged to them. The Advocate Commissioner who had inspected the property had not measured the defendants property. The defendants have not filed their document of title. Since these documents were not submitted, the Commissioner was not able to measure the properties on the basis of these documents. Meanwhile, the family of the defendants have filed the suit in O.S.No.30 of 2014 for partition before the Sub Court, Vedsanthur. Therefore, it is necessary to appoint an Advocate Commissioner to measure the suit property on the basis of the defendants documents and to measure the suit property as well as the defendants property so as to arrive at a correct decision with reference to the encroachment.

(iii) This application was resisted by the respondents by *inter alia* contending that the application for appointment of the Advocate Commissioner is an application filed after three earlier commissioners had been appointed and their reports submitted. It is the case of the respondents that they had filed a suit O.S.No.1559 of 1982 against the revision petitioner. In the said suit, an application was filed for appointing an Advocate Commissioner in I.A.2056 of 1982 and the commissioner appointed therein had filed his report and plan. This suit O.S.No.1559 of 1982 went against the plaintiff and the revision petitioner herein had filed A.S.No.89 of 1984 and while this appeal was pending, a compromise was recorded between the parties. According to the compromise, the space between the plaintiff's house and the first respondent's house measuring 3 feet was to be set apart as a street. Since the revision petitioner herein had violated the terms of the compromise, the first respondent has filed E.P.No.26 of 2021 on the file of the District Munsif Court, Vedsanthur. In this execution proceeding, a commissioner was appointed and he had submitted his report. Thereafter, once again in the instant suit, an Advocate Commissioner has been appointed and he has submitted his report. Therefore, when there are three earlier commissioner reports available in respect of the very same property, there was no necessity for appointing a fresh Advocate Commissioner.



(iv) The learned Additional District Judge, Dindigul, after hearing the parties, dismissed the said application setting out that the said petition was nothing, but an attempt to protract the proceedings. Therefore, the learned Judge had dismissed the application and challenging the same, the revision petitioner is before this court.

3. Heard the learned counsel on either side and perused the records.

4. The present petition is filed on the ground that the respondents herein have not produced their document of title before the trial Court and therefore, the measurement of the respondents property could not be taken. The respondents family have now filed a suit for partitioning their property. In the said suit, the documents have been filed. Therefore, the revision petitioner would seek to have the Advocate Commissioner appointed to note down not only the suit property, but also the property of the respondents as per the documents submitted by them in the Suit in O.S.No.30 of 2014. As argued by the respondents, on three earlier occasions Advocate Commissioner has already visited the property and submitted his report.

5. The contention of the revision petitioner is that there is reference to the suit property in the partition suit filed by the respondents and the schedule of property given therein. Therefore, it is well open to the revision petitioner to obtain certified copy of those documents to put forward his case and there is absolutely no necessity to appoint the Advocate Commissioner, especially, when there are three earlier reports already available on the file of the court.

6. In these circumstances, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

cp



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.

WEB COPY

To:

The Additional District Judge,
Dindigul.

+1 CC to M/s.AL.GANTHIMATHI, Advocate(SR-40105[F] dated 23/12/2021)

+1 CC to M/s.SPL GP (SR-40490[F] dated 27/12/2021)

C.R.P (MD)No.2093 of 2021
and
C.M.P(MD) No.11117 of 2021
23.12.2021

MGJ(12.01.2022) 4P 4C