



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2021

CORAM :

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

C.R.P. (MD) No.2184 of 2017
and
C.M.P. (MD) No.10708 of 2017

1.Veerachinnu

2.Pattayan

3.Rajamanickam ... Petitioners/Respondents 5 to 7/Defendants

vs.

1.Sago.Nesam ...1st Respondent/Petitioner/Plaintiff

2.The Revenue Divisional Officer,
O/o. the Revenue Divisional Officer,
Uthamapalayam,
Theni District.

3.The Commissioner,
Uthamapalayam Town Panchayat,
Theni District.

4.The Block Development Officer,
Uthamapalayam,
Theni District.

5.The President,
Royappanpatty Village Panchayat,
Theni District.

6.Sethumani

7.The District Collector,
Theni. ... Respondents/Respondents 1 to 4,8,9/
Defendants 1 to 4,8,9

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the fair order dated 22.09.2017 in I.A.No.475 of 2012 in O.S.No.137 of 2012 on the file of the District Munsif Court, Uthamapalayam.

For Petitioner : Mr.G.Prabhu Rajadurai

For R1 : Mr.K.R.Laxman



For R2, R4 & R7 : Mr.N.Muthu Vijayan
Special Government Pleader
For R5 : No appearance

ORDER

The defendants 5 to 7, who are the revision petitioners before this Court, are challenging the order passed by the learned District Munsif, Uthamapalayam, Theni District, in I.A.No.475 of 2012 in O.S.No.137 of 2012, in and by which the learned Judge has allowed the application filed by the plaintiff for appointing an Advocate Commissioner for local inspection of the suit properties.

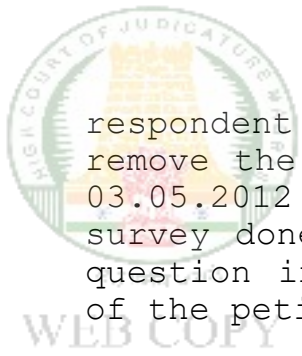
2.The facts in brief presiding the filing of the above Civil Revision Petition are as follows:-

3.The 1st respondent herein has filed a suit O.S.No.137 of 2012 on the file of the learned District Munsif, Uthamapalayam, for declaration that the suit property belongs to Jesus Sacred Heart Sisters Congregation and consequently restraining the defendants, their men or agents from creating any obstruction, encroachment, trespassing etc and also restraining them from putting up any constructions or structures, by means of an order of injunction.

4.It is the statement of the plaintiff that on instructions of the Tahsildar, Uthamapalayam, The Block Development Officer, Uthamapalayam and the Commissioner of the Town Panchayat had on 02.06.2012 along with their subordinates encroached into a portion of the suit property by using a JCB Machinery. They also tried to annex further extents of the suit properties. Therefore, in order to note down the physical features of the suit property and measure the same with a qualified Surveyor, an Advocate Commissioner was sought to be appointed. The plaintiff had contended that the report and plan of the Advocate Commissioner would go long way in helping the Court to arrive at a decision.

5.The defendants 1 to 3 and 9 had filed their written statement, denying the knowledge about the internal administration of the plaintiff and had also denied the knowledge of the Will dated 01.05.1991. They would submit that the land in S.No.3/6 was classified as Burial Ground. A compound wall has been constructed around the burial ground. This area has been surveyed with the help of the Head Surveyor in the presence of the Tahsildar, Uthamapalayam. They denied the statement of the plaintiff that they have disturbed the Coconut Trees planted by the plaintiff.

6.The defendants 1 to 3 and 9 would also submit that the lands in S.Nos.3/7A, 3/7B and 3/6 were measured by the Surveyor and it was discovered that the plaintiff had encroached a portion to an extent of 6 1/2 cents into the burial ground. After encroaching the land, the plaintiff has come forward with the suit. In fact, the 5th



respondent herein had given sufficient time to the plaintiff to remove the encroachment. Finally, the encroachments were removed on 03.05.2012 in the presence of the Tahsildar, Uthamapalayam. This survey done by the Tahsildar for the general public is called into question in the present suit. Therefore, they sought for dismissal of the petition.

7.The respondents 5 to 8 therein have also filed their counter, in which they would submit that the 8th respondent had filed W.P. (MD) No.5155 of 2012 before this Court for a direction that the land in S.No.3/6 has to be measured with the help of the Surveyor and a sum of Rs.7,83,000/- has been sanctioned for the burial ground, pathway and the compound wall. This Court considering the submissions made by the Government dismissed the said Writ Petition. Therefore, it is the contention of the respondents 5 to 8 that the property has already been measured and a compound wall was put up and therefore, there was no necessity to once again appoint an Advocate Commissioner to undertake the very same work, which has already been completed.

8.In the above petition, the learned District Munsif, Uthamapalayam, had taken oral evidence and the documents were also marked on either side. On the side of the petitioner therein, the petitioner/plaintiff had examined himself as P.W1 and Ex.P1 to Ex.P3 were marked. On the side of the respondents 5 to 8 therein, the 8th respondent, Sethumani, had examined himself as R.W1 and Ex.R1 to Ex.R3 were marked. On the side of the respondents 1 to 4 and 9 therein, R.W2, Sathesbabu and R.W3, Muthuraj were examined and Ex.R4 to Ex.R11 were marked. Ultimately, the learned Judge allowed the said petition.

9.The learned Judge on considering the evidence had observed that this Court while passing orders in C.R.P. (MD) No.1925 of 2013 dated 23.03.2016 had held that the District Munsif, Uthamapalayam should consider the applications for appointment of an Advocate Commissioner after giving opportunities to both parties to let in oral and documentary evidence and pass orders on merits, taking into consideration the report of the 3rd respondent filed before the Division Bench of the Court. Therefore, in compliance of the order passed in the above Civil Revision Petition, the learned District Munsif, Uthamapalayam, had directed the 4th respondent herein/Block Development Officer, Uthamapalayam, to produce the report dated 22.04.2012. However, the same was not produced. The respondents produced Ex.R7, which was a letter dated 23.04.2012 written by the 4th respondent herein. The 4th respondent as R.W1 during his cross-examination has admitted that the report has not been forwarded. That apart, the learned Judge had also observed that the respondents 2 to 5 and 10 had not proved that a prior notice of the survey, which was proposed to be conducted on 20.04.2012, was issued to the plaintiff and observed that notice has not been served on the



plaintiff. Therefore, the learned Judge had held that the survey conducted by the official respondents was not in the presence of the plaintiff and therefore, had allowed the impugned petition. Challenging the same, the petitioners, who are the respondents 5 to 7 and defendants 5 to 7, are before this Court.

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10. Heard the learned counsels and perused the records.

11. The learned District Munsif, Uthamapalayam, has elaborately extracted the orders of this Court in its proceedings both in the Civil Revision Petition as well as the Writ Petition and had also extracted the evidence of R.W1 to R.W3 to come to the conclusion that the official respondents have conducted the survey without notice to the plaintiff, who is an interested party, since his lands are abutting survey No.3/6. The plaintiff's case is that his land has been encroached upon and therefore, the survey done and the compound wall put up thereafter have been executed without notice to him. Therefore, the order of the learned District Munsif, appointing an Advocate Commissioner to measure the property cannot be found fault with.

12. In the result, the Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

mm

To

The District Munsif,
Uthamapalayam.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-39829[F] dated 21/12/2021)

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-39822[F] dated 21/12/2021)

+1 CC to M/s.SPL.GP (SR-39722[F] dated 21/12/2021)

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