



CRP (NPD) No.331 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.06.2022

CORAM

THE HONOURABLE Mrs. JUSTICE J.NISHA BANU

C.R.P.(NPD)No.331 of 2019
and
C.M.P.No.2434 of 2019

Lakshmi

.... Petitioner

vs

Janaki Ammal (Died)

1. Neelavathi
2. Valli
3. Manoharan

.... Respondents

Civil Revision Petition filed under Section 227 of the Constitution of India against the order and decreetal order dated 14.08.2018 made in I.A.No.11 of 2014 in A.S.No.2 of 2014 on the file of the Court of the Principal District Munsif, Tindivanam.

For Petitioner : Mr.T.Dhanasekaran

For respondent : Mr.V.Ragunathan

ORDER

This Civil Revision is filed against order and decreetal order dated



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14.08.2018 made in I.A.No.11 of 2014 in A.S.No.2 of 2014 on the file of the Court of the Principal District Munsif, Tindivanam.

2. The petitioner is the appellant and the plaintiff in the Original Suit. The suit schedule is totally 15 cents in Old S.No.26/8. The same was divided by five persons namely Munusamy, Sadagopan, Subramani, Elumalai, Balarama Pathar and each were allotted 3 cents of land by the government. The defendant is the wife of one of the allottees namely Elumalai. Since the defendant vacated Kuruvampettai and settled permanently at Kancheepuram, Munusamy, Sadagopan and Subramani each added one cent to 3 cents and are in possession of 4 cents. The case of the defendant is that her husband Elumalai was allotted patta for 3 cents. He also purchased 3 cents from Balarama Pathar and thus, she is entitled for 6 cents. However, the defendant is not in possession of 6 cents of land and her property is encroached by others. In the trial Court, an Advocate Commissioner was appointed to inspect the suit property. As in the schedule of property, it was mentioned as 4 cents, the Advocate Commissioner had measured 4 cents alone. Originally, the suit was filed for permanent injunction and subsequently, a petition seeking to appoint Advocate Commissioner was filed urgently and therefore, complete details were not stated in the petition. Hence, this second petition to appoint a fresh



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Advocate Commissioner to measure the entire 15 cents in the said survey number along with the help of surveyor and VAO and file his report and plan.

3. The respondent has filed counter stating that an Advocate Commissioner report and plan already filed were not set aside. Therefore, seeking appointment of Advocate Commissioner for the same reason to measure the properties other than the suit properties is not maintainable the trial Court on full fledged trial had passed the judgment. Only to drag on the proceedings, this application has been hence the same is to be dismissed.

4. Learned counsel for the appellant would submit that the First Appellate Court is the last Court for considering the facts and evidences and the lower Appellate Court had filed to note the scope of Order 26 Rule 9 C.P.C. The Advocate Commissioner has to be appointed to survey the entire length of 15 cents of land and decide the real issues between the parties and to distinguish each share as per the assignment. The lower appellate Court has not given an opportunity given to the petitioner to decide the real issues between the parties.

5. On the contrary, the learned counsel for the respondent would submit



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that an Advocate Commissioner was appointed on the application by the petitioner before the trial Court and the Advocate Commissioner had also filed his report and plan. Without striking out the earlier report and plan of the Advocate Commissioner, a fresh Advocate Commissioner cannot be appointed. Hence, he would pray for dismissal of the CRP.

6. Heard the learned counsel for the petitioner and the learned counsel appearing for the respondents and perused the materials available on record.

7. The petitioner filed a suit for declaration and permanent injunction and later amended as one for recovery of possession stating that the respondent trespassed into the lands of the petitioner. It is an admitted case that Old S.No.26/8, New S.No.26/25 measuring 15 cents were allotted to Munusamy, Sadagopan, Subramani, Elumalai, Balarama Patha with patta each with 3 cents by the government. The case of the petitioner is that the respondent left Kuruvamapettai and settled at Kancheepuram permanently from the year 1980. Hence 3 cents of land allotted to her husband Elumalai as it was lying vacant was divided between Sadagopan, Subramani and Munusamy thereby each taking one cent. The petitioner claims right over 3 cents allotted to Elumalai, totally an extent of 6 cents but she is not in possession of 6 cents



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and it is in possession of the others. The dispute is between the petitioner and the respondent and not with the other allottees of land. Therefore, this Court is of the opinion that an appointment of a fresh Advocate Commissioner to measure the entire 15 cents of land is not warranted. The order passed by the Court below is well founded.

8. This Court finds no infirmity or irregularity in the order passed by the Court below. Therefore, the Civil Revision Petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.06.2022

Index:Yes/No
Speaking/Non-speaking order
vsi

To

The Principal District Munsif, Tindivanam.



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