



C.R.P.(PD) Nos.387 and 389 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P.(PD) Nos.387 and 389 of 2022

and

C.M.P. No.2027 of 2022

Kannan

... Petitioner in both C.R.Ps.

Vs.

1.Kolanji

2.Kanagasabai

... Respondents in both C.R.Ps.

COMMON PRAYER: Civil Revision Petitions filed under Article 227 of the Constitution of India against the fair and the decretal orders dated 20.10.2021 in I.A. Nos.135 and 136 of 2019 in O.S. No.29 of 2014 on the file of the 1st Additional District Munsif's Court, Vridhachalam.

For Petitioner : Mr.R.Meenal

COMMON ORDER

These revision petitions are filed by the plaintiff challenging the dismissal of his application in I.A. No.136 of 2019 for seeking re-issue of



the warrant to inspect the Suit property and measure the same with the help of a qualified Surveyor and I.A.No.135 of 2019 filed for re-opening the plaintiff's side evidence for the aforesaid purpose.

2. The two applications have been taken out in the Suit in O.S.No.29 of 2014 on the file of the I Additional District Munsif, Virudhachalam. The said Suit has been filed by the revision petitioner herein seeking a declaration and permanent injunction restraining the defendants from entering the suit schedule property.

3. The petitioner would contend that he had purchased the property from one Dhanamani Ammal under a sale deed dated 22.07.1985. The said Dhanamani Ammal had in-turn got the property under the settlement deed dated 09.05.1978. The property at the time of purchase was a vacant site. The plaintiff had purchased the property for constructing a hotel, taking into consideration the future of his son.

4. It is the case of the plaintiff that in a portion of a property, he had put up a hotel in the name and style of Amudha Hotel. The construction had



been put up leaving a portion vacant. To the west of this property, the property of one Thamizhappan was situated. On 11.02.1995, the plaintiff has purchased the portion from the legal heirs of the said Thamizhappan. The defendants are the sons of one Arumugam. They had requested the plaintiff to sell the suit schedule property to them. However, the same was turned down by the plaintiff and therefore, annoyed by the refusal, the defendants started interfering with the possession and enjoyment of the property by the plaintiff. Therefore, the Suit.

5. The defendants had filed the written statement as well as the additional written statement in which, apart from the other contentions they had stated that the land to the southern side of the suit property had been acquired by the Government for the formation of N.H.45. That apart, they have also submitted that the revision petitioner has constructed the house on the land that was purchased by him from Dhanamani Ammal under the sale deed dated 22.07.1985. However, the truth of the matter is that the house has been constructed in the land purchased by the defendant on 11.12.1995 from one Hamsa valli.



WEB COPY

6. This property was also proposed to be acquired by the Government, but, however, the plan was later dropped and the house has not been demolished. The defendants therefore raised a query as to whether the properties shown in these two deeds were available on site.

7. It is for this purpose, that the plaintiff has sought to have the Commissioner warrant re-issued to enable the Commissioner to measure the property with the help of a Surveyor, F.M.B sketch for 1984-1985, A-Register extracts, Chitta and the records of the Special Tahsildar, Villupuram.

8. The second respondent had filed counter inter-alia contending that the petition has to be dismissed since already the learned Advocate Commissioner had been appointed vide orders in I.A.No.494 of 2016 and she had also submitted the report after carrying out the inspection on 24.12.2017. She had taken the assistance of a Village Administrative Officer and had issued notice to both sides. After completing the inspection, she had also submitted a report and plan.



WEB COPY

9. The report of the learned Advocate Commissioner contains all the details that the revision petitioner now seeks to obtain by way of this re-issue. That apart, the second respondent would contend that without scraping the earlier report, there cannot be a re-issue of warrant. They would therefore, seek to have the application dismissed.

10. The learned Judge on perusing the records and hearing the arguments proceeded to dismiss the said application on the following grounds :

a) that the petitioner has not sought to scrap the earlier report but has straight away come forward with the petition for re-issue.

b) the attempt of the petitioner appears to be to gather evidence to identify the land that is now available after the acquisition and its subdivision and to find out the measurements of the land now available.

c) the earlier Commissioner has in very great detail set out the physical features with measurement and therefore, there is no necessity to re-issue the warrant. Challenging the said order, the revision petitioner is before this Court.



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

12. The records would reveal that an earlier Commissioner has visited the property and noted down the physical features and also measured the properties. This measurement has taken place after the lands had been acquired by the National Highways Authority of India, which appears to have taken place in the year 2003.

13. The learned Advocate Commissioner has inspected the property on 24.12.2017. It is seen that she has inspected and measured not only the Suit property but also the adjoining lands with the help of the Surveyor and Village Administrative Officer. It appears that the revision petitioner has not filed any objections to the said report. The earlier report has been filed in the year 2017 and the suit is now at an advanced stage and further objections have been filed on the side of the petitioner to the Commissioner's report.

14. Considering the fact that the measurements and the physical



features are already on record, if the petitioner has any objection to the said report, it is well open to him to put the Commissioner into the box and cross examine her. There cannot be re-issue of the warrant without scraping the earlier report. Therefore, I do not see any reason for interfering with the orders of the learned first Additional District Munsif, Villupuram.

15. In the result, the Civil Revision Petitions are dismissed and the order passed by the learned first Additional District Munsif, Villupuram, dated 20.10.2021 in I.A.Nos.135 and 136 of 2019 in O.S.No.29 of 2014 is confirmed. No costs. Consequently, connected civil miscellaneous petition is closed.

18.02.2022

Index : Yes/No
Speaking Order : Yes / No
ab/ssn



WEB COPY



C.R.P.(PD) Nos.387 and 389 of 2022

P.T. ASHA, J.,

ab/ssn

To

1. The 1st Additional District Munsif Court.
Vridhachalam.
2. The Section Officer,
VR Section, Madras High Court,
Chennai.

**C.R.P.(PD).Nos.387 and 389 of 2022
and
C.M.P. No.2027 of 2022**

18.02.2022