



C.R.P. No.1617 of 2020 & CMP No.9775 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.R.P. No.1617 of 2020
& CMP No.9775 of 2020

1. Murugesan
2. Moorthy
3. Saravanan

... Petitioners

Vs.

Babu

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 18.11.2019 made in I.A. No.93 of 2019 in O.S. No.100 of 2012 on the file of the learned District Munsif, Arakkonam.

For Petitioners : Mr. Jeremiah Gregory John

For Respondent : Mr. R. Ganesh Kumar

ORDER

This revision petition is filed against the fair and decretal orders dated 18.11.2019 made in I.A. No.93 of 2019 in O.S. No.100 of 2012 on the file of the District Munsif, Arakkonam.



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2. The revision petitioners are the defendants in O.S. No.100/2012 on the file of the District Munsif, Arakkonam. For the sake of convenience, the parties are referred to as per their ranking in the trial court in the Original suit. The plaintiff filed the suit for a permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. The defendants filed a written statement and both the parties went for trial. The defendants filed an application in I.A. No.93/2019 under Order XXVI Rule 9 CPC with the following prayer:

"To inspect the petition property and its surrounding circumstances and to demarcate the same with the extent of 2¼ cents stated in the plaint schedule and also the measurements given in the plaint schedule namely east to west 23.1 feet on the northern side, East to West 26.4 ft. on the Southern side. North south 60.7 ft. on the esastern side and north to south 75.9 ft. on the Western side with the help of Arakkonam Taluk surveyor and to file a detailed report and plan."

3. The plaintiff filed a counter and after full contest, the



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learned District Munsif, Arakkonam, dismissed the application vide her orders dated 18.11.2019 on the following grounds:

- (1) The suit is filed only for a bare injunction.
- (2) The measurements given in the plaint schedule is exactly the same as contained in the sale deed filed by the plaintiff.
- (3) There is no dispute with regard to the identity of the suit property.

4. Aggrieved over the same, the present Civil Revision Petition is filed by the defendants.

5. Heard Mr. Jeremiah Gregory John, learned counsel appearing for the petitioners and Mr. R. Ganesh Kumar, learned counsel for the respondent.

6. The learned counsel appearing for the revision petitioners relied on the decision in *Shreepat vs. Rajendra Prasad & Ors* reported in **2000(6) Supreme 389** in which it is held that when there is a serious



dispute with regard to area and boundaries of the land in question especially with regard to its identity, the courts below, before decreeing the same, should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of the suit property.

7. The above decision pertains to a suit filed for a declaration of title and for recovery of possession and there was a serious dispute with regard to the identity of the land in dispute. A bare perusal of the written statement filed by the 1st defendant (adopted by the other defendants) clearly shows that there is no dispute with regard to the identity of the suit property. The suit is also filed for a bare injunction. The trial court after taking all these aspects into its consideration had dismissed the application in I.A. No.93/2019 by observing thus:

"5. This suit is filed by respondent herein for the relief of permanent injunction restraining the petitioners herein from interfering this his possession in the suit property. The suit



property is 0.02 ¼ cents out of 19 cents with specific boundary. The appointment of advocate commissioner is sought to locate 2 ¼ cents in suit survey number. The settled proposition of law is that the commissioner cannot be appointed for the purpose of collection of evidence. Further suit schedule property is mentioned with specific boundaries which is in accordance with the sale deeds filed by the plaintiffs side. The measurement in sale deed and the suit schedule property is one and the same. There is no dispute with respect to identity of property. Based on said documents already temporary injunction is granted which is also upheld by appellate court. Further suit is in part heard stage and it is more than 5 years old the same also taken into account. The petitioners have not made out any grounds for appointing of Advocate Commissioner at this stage."

8. I do not find any infirmity in the orders passed by the trial court and therefore, the Civil Revision Petition is liable to dismissed.



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9. In the result.

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is dismissed.
- ii. the fair and decretal order dated 18.11.2019 passed in I.A. No.93 of 2019 in O.S. No.100 of 2012 on the file of the District Munsif, Arakkonam, is upheld.
- iii. Since the suit is of the year 2012, the learned District Munsif, Arakkonam is directed to proceed with the trial and dispose of the same as expeditiously as possible.

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Index : Yes/No

Internet : Yes/No

Speaking/non speaking
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R.HEMALATHA, J.,
bga

To

1. The District Munsif, Arakkonam.
2. The Section Officer, VR Section, High Court, Madras.

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