



WEB COPY



CRP.PD.No.1297/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRP.PD.No.1297/2019 and CMP.No.8466/2019

[Virtual Mode]

1.Elumalai Naicker
2.Suguntha

.. Petitioners/
Defendants 1 & 4

Vs.

A.Loganathan

.. Respondent

Prayer:- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order dated 30.01.2019 passed in I.A.No.195/2018 in I.A.No.109/2018 in O.S.No.1/2016 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirukalukundram.

For Petitioners : Mr.N.C.Ashok Kumar

For Respondent : Mr.N.Sivaprakash



CRP.PD.No.1297/2019

WEB COPY

ORDER

- (1) This Civil Revision Petition is directed against the order dated 30.01.2019 passed by the District Munsif-cum-Judicial Magistrate Court, Thirukalukundram in I.A.No.195/2018 in I.A.No.109/2018 in O.S.No.1/2016.
- (2) The revision petitioners are the defendants 1 and 4 in the Suit in O.S.No.1/2016 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirukalukundram.
- (3) The Suit in O.S.No.1/2016 was filed by the plaintiff/respondent in this Civil Revision Petition for the following reliefs.

(a) Declaring the title of the plaintiff in respect of the property more fully detailed in the Suit schedule hereunder consequentially directing the defendants to deliver vacant possession of the Suit schedule mentioned property within the time limit specified by this Hon'ble Court and in default of which the delivery of vacant possession may be done through the process of this Hon'ble Court;

(b) Granting mandatory injunction directing the defendants 1 to 6 remove the huts put up by them in the Suit schedule mentioned property within the time limit specified by this Hon'ble Court and in default of which the huts may be removed through the process of this Hon'ble Court;

- (4) The Suit property is described as a vacant land measuring an extent



CRP.PD.No.1297/2019

of 12 cents (5232sqft) out of an extent of 25 cents in S.No.471/4 in Illayanar Kuppam village, Melperumalcherry panchayat. The Suit was contested by the revision petitioners on various grounds.

- (5) The respondent claimed title to the property by contending that the Suit property originally belong to one Tmt.Kanniammal wife of Thambiran Naicker and that she had settled the Suit property under a registered Settlement Deed dated 10.04.1997 in favour of her grandson one Mr.M.Loganathan son of Mani Naicker.
- (6) It is further stated that plaintiff purchased that the Suit property from the said Mr.M.Loganathan under a registered Sale Deed dated 29.08.2007. Though it was contended by the plaintiff in the plaint that he had taken possession of the Suit schedule property and transferred patta in his favour, the plaintiff has admitted that during the first week of February, some of the defendants, made an attempt to trespass into the Suit schedule property and succeeded in their attempt.



CRP.PD.No.1297/2019

(7) Since the plaintiff is not in possession of the property, the plaintiff also asked for delivery of possession and for mandatory injunction to remove the huts put up by the defendants in the Suit. During the pendency of the Suit, the defendants filed an application in I.A.No.109/2018 for appointment of an Advocate Commissioner to measure the Suit property with the help of Taluk Surveyor and to note down the physical features of the Suit property. In the affidavit filed in support of the petition, the defendants specifically referred to the admission made by the plaintiff about the possession of the 1st defendant.

(8) It was further contended that the defendants have put up a hut in the Suit property even before 2013 and that the 4th defendant also built a pucca cement roofed house in the Suit schedule property in the year, 2007. Stating that the revision petitioners have prescribed title to the Suit property by adverse possession, the 1st petitioner has specifically pleaded that the appointment of Advocate Commissioner is necessary to minimise the oral evidence to note down the physical features and measuring the property with the help of Taluk Surveyor.



CRP.PD.No.1297/2019

- (9) Later, when the application in I.A.No.109/2018 is pending, the revision petitioner filed another application in I.A.No.195/2018 in O.S.No.109/2018 to withdraw the earlier application in I.A.No.109/2016 with liberty to file fresh application under Order 26 Rule 9 of CPC for appointment of an Advocate Commissioner to measure the Suit property and to note down the electricity service connection that exists in the Suit property and to note down other physical features with the help of the Taluk Surveyor and by appointing a licensed Civil Engineer to ascertain the age of the 4th defendant house.
- (10) This application was dismissed by the Lower Court. Though this application was opposed by the respondent/plaintiff on the ground that the 2nd application is not maintainable, the Lower Court came to the conclusion that the application is maintainable as the previous application stated to have been filed by the 4th respondent was not dismissed on merits. However, the Lower Court dismissed the application on the ground that there is no necessity to analyse the age of building of the Suit schedule property and that therefore the



CRP.PD.No.1297/2019

application cannot be entertained. Aggrieved by the said order, defendants 1 and 4 in the Suit had preferred the above Civil Revision Petition.

- (11) Learned counsel appearing for the revision petitioner submitted the application originally filed was by directing the Advocate Commissioner to make a local inspection with the existence of the Taluk Surveyor and that the Suit property cannot be valued without the assistance of a qualified engineer. The application was to avoid a formal defect, and the Lower Court ought to have allowed the application.
- (12) Learned counsel then submitted that the Suit itself has been filed without any cause of action. Since one of the issues that arise for consideration before the Trial Court is whether the building put up by the defendants was a recent one or the buildings were put up by the revision petitioners long back, the commissioner is necessary to ascertain the age of the building.
- (13) Learned counsel also submitted that it will be in the interest of justice to appoint an Advocate Commissioner to make a local



CRP.PD.No.1297/2019

inspection and to file a report with plan with the help of licensed Civil Engineer not only to point out the physical features but also to ascertain the age of the building. It will be relevant and helpful to decide or resolve the issue in controversy.

- (14) Learned counsel appearing for the respondent on the other hand strenuously argued that the order of Court is perfectly in order and there is no irregularity. Learned counsel then submitted that the 4th defendant filed an application earlier and it was dismissed. Therefore, the 2nd application which is also filed by the 4th defendant is not maintainable.
- (15) Learned counsel after referring to the dates and events, submitted that the attitude of the revision petitioners is always to protract the proceedings. Learned counsel submitted that the object behind the application was to delay the disposal of the Suit. Though several other submissions were also made, this Court is unable to see any valid point or the prejudice that is likely to be caused to the respondent on account of allowing the application filed by the revision petitioners before the Lower Court.



CRP.PD.No.1297/2019

- (16) The Trial Judge dismissed the application on the reason that the Court need not ascertain the age of the building as it is not necessary for the purpose of deciding or resolving any issue arise between the parties. The admission of plaintiff in the plaint that the 4th defendant is the possession of the property is relevant.
- (17) The respondent has described the Suit property as a vacant land whereas the existence of the building is not disputed. Therefore the appointment of an Advocate Commissioner to note down the physical features and the age of the building is necessary.
- (18) Assessment of age, and value of the building with the help of experts is also relevant. Since the relevance of an application is decided in favour of the revision petitioner, this Court is unable to sustain the order of the Lower Court dismissing the application.
- (19) Since the attempt was to remove the formal defect in the earlier application, this Court is unable to sustain the order rejecting the application which would only enable the revision petitioner to obtain evidence to minimise oral evidence.
- (20) In the result, the Civil Revision Petition is **Allowed** and the order of



WEB COPY



CRP.PD.No.1297/2019

Lower Court dated 30.01.2019 passed in I.A.No.195/2018 in I.A.No.109/2018 in O.S.No.1/2016 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirukalukundram is set aside and the Trial Court is directed to pass further orders for issuing warrant to the Commissioner and expedite the trial of the Suit in O.S.No.1/2016 and dispose of the same as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order.

02.02.2022

cda

Internet : Yes

To

The District Munsif-cum-Judicial Magistrate Court,
Thirukalukundram.



WEB COPY



CRP.PD.No.1297/2019



WEB COPY



CRP.PD.No.1297/2019

S.S.SUNDAR, J.,

cda

CRP.PD.No.1297/2019

02.02.2022