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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.R.P.NO.783 OF 2021

&

C.M.P.NO.6562 OF 2021

Mahathma

..Petitioner/Plaintiff

Vs.

1. Chokkalingam
2. Kalpana
3. Sivalingam
4. Indira
5. Vennila
6. Shanthi
7. Seenivasan
8. Dhanasekaran

..Respondents/Defendants

Prayer: Civil Revision Petition under Article 227 of the Constitution of India to set aside the order made in I.A. No. 2 of 2020 in O.S. No. 8 of 2020 dated 21.12.2020 on the file of the learned District Munsif Court, Uthangarai.

For Petitioner :: Mr.A.Prakash

For Respondents :: Mr.V.Nicholas for
R1 to R6

O R D E R

This Civil Revision Petition is filed challenging the order dated 21.12.2020 passed by the learned District Munsif, Uthangarai, dismissing I.A. No. 2 of 2020 in O.S. No. 8 of 2020.

2. The brief facts are:



This is the second round of litigation between the same parties. The earlier litigation pertains to a certain tamarind tree, which the plaintiff/revision petitioner claims was situated in S.No. 75/3B. Since he had some disturbance to his personal enjoyment of tamarind tree from the 1st defendant in the present suit, he laid O.S. No. 10 of 2017 against the 1st defendant for declaration of his title over the tamarind tree and for a permanent injunction. The trial Court decreed the suit and the 1st defendant took up the matter before Sub Court, Uthangarai in A.S. No. 12 of 2017. That appeal came to be allowed. A reading of the First Appellate Court's judgment indicates that though the plaintiff contended therein that the tamarind tree in question was in S.No. 75/3B, the tamarind tree was not proved to be his and in order to come to that conclusion, it took into account that none of the documents including the partition deed under which the plaintiff claims title to the tamarind tree indicates about the existence of the tamarind tree there.

3. The present suit in O.S. No. 8 of 2020 is indeed laid for declaration of title of the plaintiff/revision petitioner over 7.5 cents of land in S.No. 75/3B and for injunction. In this suit, he required a Commissioner to be appointed for measuring the property. This was opposed by the defendants and that objection came to be sustained by the learned Trial Judge when he chose to dismiss the application in I.A. No. 2 of 2020 for appointing a Commissioner.

4. Heard both sides.

5. Learned counsel for the revision petitioner/plaintiff submitted that earlier suit was confined to plaintiff's right over the tamarind tree and the present suit pertains to his title over a piece of land in S.No. 75/3B. Hence, the cause of action for both the suits are different, but, the learned District Munsif, Uthangarai, appears to have been influenced by the findings in A.S. No. 12 of 2017.

6. A careful reading of the judgment in A.S. No. 12 of 2017 indicates that the cause of action previously was confined to a tamarind tree and not title over the land. The present suit is for title over the land. In this case, the defendants have taken out a plea that the piece of property over which the plaintiff claims title is poramboke, and that it does not belong to the plaintiff. Even if the defendants' line of pleading in this case is presumed to be true, yet, the plaintiff can defend his possession against the whole world except the true owner. How the Court is going to approach this case post trial cannot be speculated at this point of time.



7. The learned counsel for the revision petitioner/plaintiff brought to the notice of this Court the patta issued in the name of the revision petitioner by the Revenue Authorities and also took this Court through the judgment in A.S. No. 12 of 2017 wherein the title documents of the plaintiff were incidentally discussed, and it is apparent that the plaintiff seems to have lost A.S. No. 12 of 2017 essentially because he could not establish the situs of the tamarind tree, and whether it was allotted to him in the partition deed etc. The scenario is quite different now. The defendants also claim title to the same piece of land, but from a different source.

8. Without getting into the merit of the rival contentions, based on the pleadings, this Court does consider that this is a case where the Commissioner's report will be useful for final adjudication. Therefore, this Court chooses to interfere with the order under challenge and allow the civil revision petition. The order of the Trial Court dated 21.12.2020 passed in I.A. No. 2 of 2020 is accordingly set aside.

9. Learned District Munsif, Uthangarai is now required to appoint an advocate, who is regular to the Court and has reasonable experience and exposure to Civil Court and practice in Civil Law as an Advocate Commissioner, fix his remuneration and invite his report. The defendants are also at liberty to approach the learned District Munsif for a direction to the Commissioner to note down such points, the defendants may be interested in.

10. The Civil Revision Petition stands allowed. No costs. Connected C.M.P. is closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

nv

To

1. The District Munsif,
Uthangarai.



2. The Subordinate Judge,
Uthangarai.

+2ccs to Mr.A.Prakash, Advocate, S.R.No.14755

+1cc to M/s.V.Nicholas, Advocate, S.R.No.14701

C.R.P.No.783 of 2021

SV(CO)
RLP(30/03/2022)