



C.R.P.(PD).Nos.1636 to 1638 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2022

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

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C.M.P.Nos.12722, 12724, 12726 of 2021

Ravichandran ...Petitioner in CRP/1636/2021

S.Sivalingam ...Petitioner in CRP/1637/2021

Jayalakshmi ...Petitioner in CRP/1638/2021

Vs

P.Sekar ... Respondent in all CRPs.

Prayer in C.R.P.No.1636 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 30.03.2021 made in I.A.No.18 of 2020 in O.S.No.48 of 2020 on the file of the District Munsif Cum Judicial



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Magistrate, Thandarampattu.

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Prayer in C.R.P.No.1637 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 30.03.2021 made in I.A.No.19 of 2020 in O.S.No.49 of 2020 on the file of the District Munsif Cum Judicial Magistrate, Thandarampattu.

Prayer in C.R.P.No.1638 of 2021: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the Fair and Decretal order dated 30.03.2021 made in I.A.No.20 of 2020 in O.S.No.50 of 2020 on the file of the District Munsif Cum Judicial Magistrate, Thandarampattu.

For Petitioner : Mr.C.Munusamy

For Respondent : Mr.P.Mani



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COMMON ORDER

Challenging the dismissal of their applications for appointing an Advocate Commissioner, the revision petitioners who are the plaintiffs in respective suits are before this Court. Since the issue involved is common, a common order is being pronounced.

2. The revision petitioners had filed a suits for declaring their title to the suit property, for an injunction restraining the 1st defendant from interfering with their peaceful possession and enjoyment of the property and also for a mandatory injunction to the 2nd and 3rd defendants to remove the name of the 1st defendant from the revenue records.



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3. The contention of the plaintiffs / revision petitioners was that the respective suit properties were a vacant site, in which they have been storing stock, cow dungs and tethering their cattle.

4. The 1st defendant / respondent would submit that he is in possession of the property and he has put up construction in the said property much prior to the filing of the suit and therefore the contention of the plaintiffs / revision petitioners that it is a vacant site is totally erroneous. The 1st defendant contended that the plaintiffs are absolute strangers to the suit property, which is in the possession and the enjoyment of the 1st defendant.

5. The suits were filed in the year 2014 on the file of the District Munsif, Chengam and was transferred to the file of the District Munsif, Thandarampattu, and re-numbered in the year 2020. After the transfer the plaintiffs have moved the impugned applications for



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appointing an Advocate Commissioner to inspect the petition mentioned properties and its location in the suit survey number with the help of the qualified surveyor and Village Administrative Officer, note down physical features with boundaries.

6. The reasons for taking out these applications nearly after 6 years after the filing of the plaint was that in the year 2019, pending the suit the 1st defendant had attempted to dig out a pit for his construction, which was successfully prevented by the plaintiffs. They would submit that they are in possession of the property, which is a vacant site and therefore they had to bring to the knowledge of the Court the fact that the suit property was a vacant site and therefore the petition.

7. The 1st defendant had resisted the above application inter alia contending that the very perusal of the affidavit would indicate that



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the petition is nothing but an attempt to protract the proceedings and gather evidence for the plaintiffs. In the counter, the 1st defendant / respondent has elaborately dealt with his defense.

8. The District Munsif, Thandarampattu by his order dated 30.03.2021 was pleased to dismiss the applications in the respective suits. Challenging the above, the plaintiffs are before this Court.

9. Heard the learned counsel on either side.

10. A mere reading of Paragraph No.15 of the affidavit filed in support of the petitions would bring out the true reason for filing the applications. The plaintiffs have stated as follows in the said paragraph:

“15. Under the said circumstances the respondent/1st



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defendant with help of the evil elements, they were trying to dig out a pith for basement for construction in the suit property on 01.07.2019 and the was thwarted their unlawful attempt and retained the suit property as a vacant site by this petitioner. If the respondent and their hencemen succeeded in their attempt I would be incurred heavy loss and hardship. I have been in uninterrupted possession and enjoyment of the petition mentioned suit property as a vacant site and using the same as storing up hays, dungs and for tying up cattles therein. Hence, it is inaviatable responsibility of the petitioner to bring to the kowledge of the Hon'ble Court that the suit property is being vacant site as on date. Otherwise the respondent will be put up constructions therein and wrongfully claim the suit property as his property.”

11. The intent is further highlighted when reading paragraph No.16, which reads as follows:

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“16.Under the said circumstances, the respondent/1st defendant and their hench mens are day to day trying to dig out a pith for basement for construction in the suit property and trying to annex the same with adjacent house. If the respondent/1st defendant and his hencemen will achieve their attempt, the petitioner could not be get any suitable remedy from this Hon’ble Court.”

12. The above recitals would clearly show that the plaintiffs are only seeking to gather evidence. The plaintiffs are also not even aware about the location of their respective properties, as one of the prayers sought for is a direction to the Advocate Commissioner to fix the locality of the property. The plaintiffs have come forward with a case that the suit property is a vacant site and the defendant has come forward with the case that there are construction on the property. Both the parties have to prove their case independently. The plaintiffs cannot use the Advocate Commissioner to buttress the case by



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gathering evidence about the lie and location of the suit property.

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13. The learned District Munsif, Thandarampattu, has rightly rejected the said request, which is made nearly 6 years after filing of the suit.

14. Therefore, the Civil Revision Petitions are dismissed. Consequently, connected Civil Miscellaneous Petitions are closed. No costs.

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Index : Yes/No
Speaking order/non-speaking order

To

*The District Munsif Cum Judicial Magistrate,
Thandarampattu.*

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