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C.R.P(PD)Nos.2312 & 2802 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P.(PD)Nos.2312 & 2802 of 2017

and

C.M.P.Nos.10887 & 13272 of 2017

Thayammal

... Petitioner in both CRPs

versus

Meenathal

... Respondent in
CRP No.2312/2017

1.Meenathal

Ramathal (died)

2.The State of Tamil Nadu,
Represented by
The District Collector,
Collectorate,
Tiruppur.

3.The Tahsildar,
Taluk Office,
Pollachi Road,
Palladam Taluk.

Appasamy Gounder (died)

4.Shanmugam @ Shanmugasundaram

5.Moorthy

6.Rukkumani

... Respondents in CRP No.2802/2017



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Prayer in CRP No.2312/2017:

Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal Order dated 01.06.2017 in I.A.No.120 of 2017 in I.A.No.953 of 2011 in O.S.No.186 of 2011, on the file of the learned District Munsif Judge, Palladam.

Prayer in CRP No.2802/2017:

Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal Order dated 14.07.2017 in I.A.No.190 of 2017 in O.S.No.186 of 2011, on the file of the learned District Munsif Judge, Palladam.

For Petitioner in both CRPs : Mr.E.K.Kumaresan
For R1 in both CRPs : Mr.P.M.Duraisamy
For R2 & R3 in CRP2802/2017 : Dr.S.Suriya,
Additional Government Pleader

ORDER

Both the Revision Petitions have been filed by the plaintiffs in O.S.No.186 of 2011, which is now pending on the file of the District Munsif Court at Palladam.

2.The said suit had been filed by the plaintiff seeking declaration that the plaintiff is the absolute owner of the suit property and for consequential injunction restraining the first, second and fourth defendants from interfering with peaceful possession and for costs of the suit.



3.The suit property had been described in the Schedule to the plaint as House bearing Door No.24 with Electricity Connection No.105, measuring 1 Cent in Vadugapalayam Village, Palladam in Grama Natham No.4/2.

4.It was the case of the plaintiff that one Nachimuthu Gounder had been allotted the suit and the other properties under a Registered Partition Deed date 07.04.1983 and that the plaintiff was in possession and enjoyment of the suit property from the year 1984. It was also the further case of plaintiff that the first and second defendants, had obtained a Settlement Deed dated 06.10.1988, and that the Settlement Deed was never acted upon and that the plaintiff continued to be in possession and enjoyment of the suit property. Thereafter, it had been stated that the first and second defendants tried to measure the suit property and therefore, the plaintiff had necessity to file the suit for declaration of title and for permanent injunction.

5.In that particular suit, the second defendant had been set ex-parte.

6.Along with the suit, the plaintiff had also filed I.A.No.953 of 2011 seeking interim injunction pending disposal of the suit. In that Interlocutory Application, also the second defendant had been set ex-parte.

7.Thereafter, the second defendant filed I.A.No.991 of 2013, to set aside



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the ex-parte order in the suit alone. That application was allowed on 23.01.2014. A separate application had not been filed to set aside the ex-parte order in I.A.No.953/2011. It was filed in the year 2017 and the second defendant filed I.A.No.120 of 2017. That Interlocutory Application was allowed by an order dated 01.06.2017 and questioning that particular order, the present C.R.P.No.2312 of 2017 has been filed.

8.Let me address the issues in C.R.P.No.2312 of 2017 in the first instance.

9.It is informed by both the learned counsel for the revision petitioners/plaintiffs and also the respondent/second defendant that the second defendant, subsequent to the ex-parte order in the suit having been set aside, had also filed the written statement and the suit is ripe for trial.

10.Therefore, I would direct the District Court, Palladam to frame necessary issues on the pleadings already available in the Court and thereafter, commence trial in O.S.No.186 of 2011. The revision petitioner need not meander around the Interlocutory Application in I.A.No.953 of 2011, since the suit itself is directed to be taken up for trial and necessary evidence will have to



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be tendered as to whether the plaintiff/revision petitioner is entitled for permanent injunction itself. Therefore, the issues for interim injunction will get merged with the relief sought in the suit and the revision petitioner need not pursue the order in I.A.No.120 of 2017 as any reasoning given in the order in I.A.No.120 of 2017 will not have any bearing on the Judgment to be delivered on analysis of evidence in O.S.No.186 of 2011 as such judgment will be delivered on the basis of evidence adduced by both the parties.

11.With the said observations, the Civil Revision Petition No.2312 of 2017 is dismissed, however directing both the plaintiff and the respondent/second defendant and the other defendants to commence trial and to participate in the trial proceedings. Further, the learned District Munsif, Palladam, is directed to proceed further with trial in the suit in O.S.No.186 of 2011. No costs.

12.The issues in C.R.P.No.2802 of 2017 had arisen owing to the fact that the second defendant, had filed I.A.No.1901 of 2017 under Order XXVI Rule 9 of C.P.C.

13.The learned counsel for the revision petitioner stated that the suit is filed for declaration of title and for permanent injunction. The issue in respect of possession, will have to be established only by evidence to be let in by both



the parties and an Advocate Commissioner cannot be appointed for gathering evidence.

14.A perusal of the order which is now impugned in the revision petition shows that the learned District Munsif, Palladam had appointed an Advocate Commissioner and had directed that the warrant to be issued to determine the physical features of the property. As stated in the preamble itself, the plaintiff claims possession from the year 1984 and also claimed that he is in continuous possession. The defendants on the other hand, claim that they have a right under a Settlement Deed dated 06.10.1988.

15.The nature of title of the plaintiff will have to be established only by the plaintiff. The nature of possession and legality of such possession will have to be established only by the plaintiff.

16.However, it is stated that since there had been some structural alterations in the property, necessity to appoint an Advocate Commissioner arose and therefore the second defendant had filed an application under Order XXVI Rule 9 C.P.C., for appointment of an Advocate Commissioner. An Advocate Commissioner had also been appointed.



17.I am informed that since the Civil Revision Petition has been filed, the Advocate Commissioner had not taken any steps to execute the warrant. Let him hold over execution of the warrant. As stated in the order in C.R.P.No.2312 of 2017, let evidence of both the parties be adduced in the first instance. This is necessary. The plaintiff should graze the witness box and adduce evidence. Thereafter, let the second defendant had also graze the witness box and adduce evidence. On analysis of the evidence, if the learned District Munsif finds that further clarification with respect to the nature of the property or the nature or structural alterations of the property is required, then let the warrant be issued to the named Advocate Commissioner and he shall then make an inspection of the property and file a report.

18.If such a decision is taken by the learned District Munsif, Palladam after the evidence of the plaintiff and defendants are recorded, the Advocate Commissioner is to inspect the property after giving notice to both the plaintiff and the second defendant and in their presence he shall inspect the property. An opportunity is given to the both sides to file objections to the report if deemed necessary. They may even summon the Advocate Commissioner to adduce evidence and also to be cross examined if required in respect of the report filed by him.



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19.These are steps which can be taken after the evidence of the plaintiff and the defendants are recorded by the learned District Munsif at Palldam. If that evidence is sufficient to address the issues framed in the suit, I.A.No.190 of 2017 need not be pursued and warrant need not be issued to the Advocate Commissioner. That decision should be taken after recording of evidence.

20.Let me not interfere with the order which has been already passed, but only direct that it should be held over and the warrant be issued after recording of evidence.

21.With the said observations, this Civil Revision Petition No.2802 of 2017 stands disposed of. No costs.

22.In the result,

(i) C.R.P.No.2312 of 2017 is dismissed. No costs.

(ii) C.R.P.No.2802 of 2017 is disposed of. No costs.

(iii) Consequently, the connected miscellaneous petitions are closed.

09.03.2022



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Index: Yes/No
Speaking Order: Yes/No
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To:

1. The District Munsif Judge,
Palladam.
2. The Public Prosecutor,
High Court, Madras.
3. The Section Officer,
V.R. Section,
High Court of Madras.

C.V.KARTHIKEYAN, J.

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