



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.R.P.(PD) (MD) No.293 of 2017

and

C.M.P.(MD) No.1404 of 2017

S.Easwaran

.. Petitioner/Petitioner/
Plaintiff

-vs-

1.M.Shanmuganathan

2.Shanthi Chinnathai

.. Respondents/Respondents/
Defendants

Prayer :- Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.737 of 2016 in O.S.No.51 of 2015 dated 22.11.2016 on the file of District Munsif Court, Ambasamudram.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.H.Arumugam

ORDER

The plaintiff has filed this Revision challenging the order dated 22.11.2016 in I.A.No.737 of 2016 in O.S.No.51 of 2015 passed by the learned Principal District Munsif, Ambasamudram in and by which, the learned Judge dismissed the petitioner's application seeking appointment of an Advocate Commissioner for inspecting the schedule mentioned property along with the Sale Deeds, note down its measurements and physical features with the help of the Taluk Surveyor and submit a detailed report.

2. The brief facts preceding the filing of this petition are as follows:-

2.1. The plaintiff had filed the suit in O.S.No.51 of 2015 on the file of the District Munsif, Ambadamudram for a declaration that he is the owner of the suit property and for a consequential injunction.

2.2. The suit property was described as an extent of 79 cents comprised in S.No.278/1, Old No.278, Vikaramasingapuram Village, Ambasamudram, Tirunelveli within specified boundaries.



3. The plaintiff would contend that he is the owner of the property by virtue of a registered Sale Deed dated 25.01.2010 from which date, he has been in possession and enjoyment of the property. The 79 cents in S.No.278 was subsequently subdivided as S.No.278/1 and Patta No.1840 was issued individually to the plaintiff. The 1st defendant, who had no right, title or interest to the suit property, had claimed a right on the basis that he had purchased the same from the 2nd defendant on 25.09.2007. The plaintiff would submit that this Sale Deed is null and void and fabricated one.

4. The respondents had filed a written statement objecting and refuting the claim of the plaintiff. The plaintiff had thereafter, taken out an application in I.A.No.737 of 2016 for appointing an Advocate Commissioner for the reasons stated supra.

5. The reason which has prompted the petitioner/plaintiff to file the application has been set out in paragraph 6 of the affidavit filed in support of the application in which, the plaintiff would contend that the respondents have filed their written statement where there is a difference in measurement, boundaries and location of the properties and therefore, he sought to have an Advocate Commissioner appointed to inspect and note down the physical features.

6. The 1st defendant had countered the said contention by contending that the application is nothing but an attempt to gather evidence and cannot be permitted. The learned Principal District Munsif, Ambasamudram, after hearing both parties, dismissed the said application by his detailed order dated 22.11.2016. Challenging this order, the revision petitioner is before this Court.

7. Once again the only argument advanced was that in the written statement of the defendants, the measurement, identity and location of the property has been wrongly given and therefore, an Advocate Commissioner has to be appointed.

8. It is an axiomatic principle of law that a plaintiff has to win or loose his case on the strength of his case and not on the weakness of the defence. The plaintiff has come forward with the case that he has purchased the entire extent in S.No.278, which has been now subdivided as S.No.278/1. In these circumstances, the contention raised by the defendants in their written statement is of no significance. The petitioner has to prove his right to the property on the strength of the documents under which he has purchased the same and for obtaining the decree of injunction, he has to prove that he is in possession of the same and an Advocate Commissioner cannot be used to gather evidence and substantiate the plaintiff's claim.



9. The learned Principal District Munsif, Ambasamudram, has rightly dismissed the application in I.A.No.737 of 2016 in O.S.No.15 of 2015 by his order dated 22.11.2016 and I do not find any reason to interfere with the said order.

10. Accordingly, this Civil Revision Petition stands dismissed. Considering the fact that the suit is of the year 2015, the learned Judge shall dispose of the same on or before 31.08.2022. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

// True Copy //

/ /2022
Sub Assistant Registrar(CS)

abr

Note:-In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

The Principal District Munsif,
Ambasamudram.

+1 CC to M/s.M.KANNAN, Advocate (SR-3808[F] dated 02/02/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-3884[F] dated 03/02/2022)

C.R.P. (PD) (MD) No.293 of 2017
Dated: 02.02.2022

MK/17.02.2022/3P/4C