



WEB COPY



C.R.P.No.1221 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2023

CORAM :

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

Civil Revision Petition No. 1221 of 2021
and
C.M.P. No. 9418 of 2021

Selvaraj

.. Petitioner

Versus

Ethirajulu

.. Respondent

Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the docket order dated 19.03.2019 in I.A. No. 1640 of 2017 in O.S. No. 226 of 2017 on the file of the learned 1st Additional District Munsif, Kallakurichi.

For Petitioner	:	Mr. N. Suresh for Mr. M.Gnanamoorthy
For Respondent	:	Mr. D. Padmanabhan

ORDER

The defendant in O.S. No. 226 of 2017 on the file of the I Additional District Munsif, Kallakurichi is the revision petitioner herein. The respondent is the plaintiff, who has instituted the said suit in O.S. No. 226 of 2017 for a declaration to declare that he is the owner of the suit property and for a consequential injunction restraining the defendant from in any trespassing into the suit property and for costs.



C.R.P.No.1221 of 2021

2. In the plaint in O.S. No. 226 of 2017, it is claimed by the plaintiff that the suit property was in possession of his grand father and his father for several years atleast from the year 1929 and they have put up a thatched house thereof. By recognising such possession patta has been issued by the Revenue Tahsildar, Kallakurichi. Presently, the plaintiff is residing in the suit property and he is paying the taxes and charges in his name. While so, on 04.12.2015, the defendant attempted to trespass into the property without any right and it was prevented by him. In view of such attempt to trespass, the plaintiff approached the revenue authorities on 02.12.2015 and paid the fee to survey the land belong to him and to fix the four boundaries. However, the defendant had approached the police authorities and give a complaint to Thyagadurgam Police Station to restrain the plaintiff from surveying the land in his possession. The police officials after enquiry, directed the defendant to approach the revenue authorities to resolve the land dispute. In spite of the same, the defendant attempted to trespass into the property in possession of the plaintiff and therefore, he had instituted the suit.

3. On notice, the defendant/revision petitioner herein filed a written statement repudiating the plaint averments and contended that he is the owner of the land measuring 8 feet on the North to South of the suit property



C.R.P.No.1221 of 2021

and it is in his possession. In the patta issued to the plaintiff, measurements are erroneously mentioned which led to the dispute. The defendant has already filed an appeal before the District Revenue Officer and it was allowed on 28.12.2017 with a direction to issue patta to him in respect of the land in the Northern and Southern side of the suit property however, by suppressing the same, the plaintiff has filed the present suit. The defendant therefore prayed for dismissal of the suit.

4. Pending suit, the plaintiff has filed the instant application in I.A. No. 1640 of 2017 under Order 28 Rule 9 of Civil Procedure Code to appoint an advocate commissioner to note down the physical features of the property with the help of the Taluk Surveyor and to measure the property and submit a report.

5. The application for appointment of advocate commissioner was opposed by the defendant-revision petitioner by contending that appointment of an advocate commissioner is unnecessary. After instituting the suit, the plaintiff had constructed a compound wall on the northern and southern side of the suit property over which he has no right. The plaintiff, only to bring the existence of a newly constructed compound wall to the notice



C.R.P.No.1221 of 2021

of the Court, has filed the present application. The plaintiff, who has instituted the suit for declaration and consequential injunction is bound to prove the averments independently without the aid of the commissioner. Accordingly, the defendant prayed for dismissal of the application.

6. The Court below, after hearing both sides, allowed the application for appointment of an advocate commissioner on 19.03.2019 and directed the advocate commissioner to note down the physical features of the suit property, measure the full extent of the property with the aid of a qualified surveyor and to file a report thereof. Aggrieved by the order dated 19.03.2019, the present civil revision petition is filed.

7. The learned counsel for the revision petitioner-defendant submits that the application for appointment of an advocate commissioner has been filed only to fish out evidence. The Court below did not take note of the fact that the averments in the plaint have to be independently proved by the respondent - plaintiff without taking the aid of the report of the advocate commissioner. The application has been filed to find out as to who is in possession of the property in dispute and the extent of possession, which is legally impermissible. The court below, without application of mind as to the

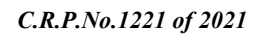


C.R.P.No.1221 of 2021

nature of the relief sought for in the suit, has allowed the application for appointment of an advocate commissioner. The learned counsel therefore prayed for allowing this Civil Revision Petition as prayed for.

8. On the contrary, the learned counsel for the respondent-plaintiff would submit that the suit was filed for a declaration to declare that the plaintiff is in possession of the suit property. In the suit, the defendant filed a written statement and contended that he is in possession of the land measuring 8 feet on the Northern and Southern side of the suit property. In such circumstances, the appointment of an advocate commissioner along with a taluk surveyor to measure the property will only enable the trial court to decide the dispute involved in the suit with ease. Even otherwise, it is always open to the revision petitioner- defendant to file his objections to the report of the advocate commissioner, who has already inspected the suit property pursuant to the order dated 19.03.2019 passed by the trial court. The learned counsel for the respondent therefore prayed for dismissal of the civil revision petition.

9. Heard the counsel for the petitioner as well as the respondent and perused the materials placed on record. The respondent-plaintiff has filed



<https://www.mhc.tn.gov.in/judis>



C.R.P.No.1221 of 2021

10. With the above direction, this Civil Revision Petition is disposed of.

No costs. Consequently, connected miscellaneous petition is closed. The trial court is directed to take up the suit and dispose it of within a period of six months from the date of receipt of a copy of this order.

16.02.2023

kv

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No
To

1. The 1st Additional District Munsif, Kallakurichi.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.R.P.No.1221 of 2021

V.BHAVANI SUBBAROYAN,J.

Kv

CRP No. 1221 of 2021

16.02.2023