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CRP.No. 1994 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.02.2023**

CORAM:

THE HONOURABLE MRS. JUSTICE V. BHAVANI SUBBAROYAN

CRP.No. 1994 of 2020

and

CMP.No. 12370 of 2020

S. Palanisamy

.. Petitioner

Versus

S. Thangavel (Died)

1. T. Mariappan

2. Unnamalaiammal

3.T.Murugan

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, prays to set aside the order and decretal order dated 04.11.2019 made in I.A.No. 93 of 2018 in O.S.No. 526 of 2012 on the file of the II Additional District Munsif Court, Salem.

For Petitioner	:	Mr. D. Shivakumaran
For Respondents	:	Mr. D.M. Senthil Kumar

ORDER

This Civil Revision Petition has been filed seeking to set aside fair and decretal order dated 04.11.2019 made in I.A.No. 93 of 2018 in O.S.No. 526 of



CRP.No. 1994 of 2020

2012 on the file of the II Additional District Munsif Court, Salem.

WEB COPY

2. Heard both sides and perused the materials available on record.

3. The revision petitioner/plaintiff filed a suit in O.S.No. 526 of 2012 before the District Munsif Court, Salem, for declaration, declaring that the plaintiff is entitled to enjoy the property marked as ABCD in red colour, as shown in the rough plan described in the 'B' schedule and consequently, to restrain the defendants in any manner to dug pit and put up any wall, to construct any house in the place marked as 'ABCD' portion.

4. The 1st defendant has contested the suit by filing written statement and denied all the averments made in the plaint.

5. During the pendency of the suit proceedings, the petitioner/plaintiff has filed I.A.No. 93 of 2018 under Order 26 Rule 9 of CPC., seeking to appoint an Advocate Commissioner to measure the property shown in Document Nos. 1 to 8 filed along with the plaint and to direct him to draw a plan to substantiate the details of the suit properties with the help of Village Administrative Officer and Surveyor in the locality and file report to the Court



CRP.No. 1994 of 2020

below. After perusing the records, the trial Court dismissed the said application by the impugned order dated 04.11.2019. Challenging the findings of the trial Court, the revision petitioner has filed the present Civil Revision Petition.

6. However, the plaintiff has filed I.A.No.183 of 2019 in I.A.No. 93 of 2018 for amendment of prayer to measure the suit properties with reference to the plaint Document Nos. 2, 6 and 8 alone. Before I.A.No. 93 of 2018 could be taken up for final hearing, the 1st defendant, namely, Thangavel, the father of the 1st respondent died. The respondents 2 and 3, the wife and another son of Thangavel were brought on record and thereafter, necessary amendments were also carried out in the plaint as per the order, dated 08.09.2017 in I.A.No. 687 of 2017.

7. According to the plaintiff, in the year 1945, the said Subha Mudaliar, Son of Kandasami purchased property measuring an extent of East West 20 Mulam x 37 1/2 mulam North South from Kandasami of Paparapatti Village. Now, the first defendant and the plaintiff are enjoying a portion of the suit property by way of sale agreement. The plaintiff's father Subba Mudilar sold a portion of the property measuring an extent of 15x37.5 mulam to the



CRP.No. 1994 of 2020

Chellayee Ammal on 30.08.1955 and the same was sold on 15.06.1960 by her to one Palaniyappa Mudaliar. Again, the plaintiff's father sold a portion of the property measuring an extent of 29x37 to one Rajammal on 16.05.1973. Thereafter, the remaining portion of the property was executed by the father of the plaintiff by virtue of sale agreement in favour of the plaintiff on 01.03.1984. In that sale agreement, it is seen that the extent of East West measuring an extent is of 31x 28 South West.

8. On a perusal of the impugned order, it reveals that the plaintiff's father had executed the sale agreement in favour of the plaintiff on 01.03.1984 in respect of "A" schedule property and there is no difference with regard to measurements. It is stated that there is measurement of an extent of 28 x 31 mulam with regard to "A" schedule property in the plaint. It is further stated that the sale agreement was executed by the plaintiff's father in favour of the plaintiff and that the land belonged to one Palaniyappan in respect of West side. Even it is stated that the plaintiff's father executed the sale agreement in respect of A & B schedule properties in his proof affidavit in the year 1984, but there are no averments about the sale agreement dated 01.03.1984 in his proof affidavit. But, there is no relationship between the documents 2, 6 and 8 properties and "B" schedule properties. It is further stated that the plaintiff's



CRP.No. 1994 of 2020

father and the plaintiff are claiming right over the "B" schedule property in the
plaint. Hence, it cannot be decided to measure and find out the "B" schedule
properties based on Document Nos.2, 6 and 8. Therefore, the plaintiff has to
establish his right to prove by way of documents in respect of B schedule
property and the same is binding on the plaintiff. Hence, the learned Advocate
Commissioner cannot decide to measure the properties based on Document
Nos.2, 6 and 8 and to decide the same. Hence, this Court is not inclined to
allow the above Revision. However, the trial Court is directed to appoint an
Advocate Commissioner to measure the entire extent in respect of "ABCD" in
"B" schedule property and to decide the same in accordance with law.

9. With the above direction, the Civil Revision Petition is disposed of.
No costs. Consequently, connected Miscellaneous Petition is closed.

07.02.2023

Index :Yes/No
Speaking order : Yes/No
Neutral citation : Yes/No
msm



CRP.No. 1994 of 2020

WEB COPY

1. The II Additional District Munsif Court, Salem.
2. The Section Officer, High Court, Madras.



WEB COPY



CRP.No. 1994 of 2020

V.BHAVANI SUBBAROYAN, J.

msm

CRP.No. 1994 of 2020

07.02.2023