



CRP(PD)(MD).No.1156 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2023

DELIVERVED ON : 29. 09.2023

CORAM

THE HONOURABLE MRS JUSTICE K. GOVINDARAJAN THILAKAVADI

C.R.P(PD)(MD)No.1156 of 2021 and
CMP(MD).No.6738 of 2021

Palanimani : Revision Petitioner / plaintiff

Vs.

Palanivel : Respondent / defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.219 of 2020 in O.S.No.124 of 2013, dated 08.02.2021 on the file of the District Munsif, Uthamapalayam.

For Petitioner :Mr.K. Guhan

Fro respondent : Mr.A. Arumugam
for M/s. Ajmal Associates



CRP(PD)(MD).No.1156 of 2021

ORDER

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This Civil Revision Petition has been filed against order, dated 08.02.2021 made in I.A.No.219 of 2020 in O.S.No.124 of 2013, on the file of the District Munsif, Uthamapalayam.

2. The revision petitioner as plaintiff has filed the above suit in O.S.No.124 of 2013 on the file of the District Munsif, Uthamapalayam for declaration of title and for permanent injunction. During the pendency of the suit, the revision petitioner has filed an application in I.A.No.219 of 2020 under Order 26 Rule 9 r/w 151 CPC for appointment of an Advocate Commissioner to note down the physical features and measure the suit property with the help of the Surveyor and to file his report and plan. The said application was resisted on the side of the respondent / defendant stating that the revision petitioner / plaintiff had already filed an application in I.A.No.269 of 2014 for appointment of an Advocate Commissioner, which was dismissed by the trial Court on 02.12.2014. It is further stated that out of 2 Acres 37 Cents in the East in S.No.2015/1, 18 cents in the West was acquired by the Highways Department and the remaining extent of of 2 Acre 19 Cents was sold by Ramachakowder to



CRP(PD)(MD).No.1156 of 2021

one Nandhagopal. It is further submitted that out of 18 Cents in the East only 8 Cents of land was used by the Highways Department for formation of the road and the remaining 10 Cents is still in possession and enjoyment of Ramachakowder, which was purchased by the sole respondent / defendant. The respondent / defendant alone is in possession and enjoyment of 10 Cents. While so, the revision petitioner / plaintiff has filed a suit with false claim stating that he is the absolute owner of the above property. It is further submitted that the revision petitioner / plaintiff in contrary to the averments made in the title deeds had made a false claim in the suit and in pursuant to that urging for appointment of an Advocate Commissioner for measuring the property and for collection of evidence and therefore, the application filed by the petitioner for appointment of Advocate Commissioner is liable to be dismissed. The trial Court after considering the averments made in the application dismissed the same by stating that the purpose for appointment of Advocate Commissioner stated by the revision petitioner / plaintiff is inconsistent with the contents in the sale deeds relied on by the petitioner / plaintiff. It is further observed that the petitioner / plaintiff must prove the case only through oral and documentary evidence and the above petition has been filed only to drag on the proceedings after a lapse of six years.



CRP(PD)(MD).No.1156 of 2021

Aggrieved by the said order, the present revision is preferred.

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3. The learned counsel appearing for the revision petitioner / plaintiff would submit that it is a suit for declaration of title and for permanent injunction. He would further submit that the petitioner has purchased the suit property on 25.10.1991 and 13.10.1992 under registered sale deed. He would further submit that the respondent has created a forged document and trying to interfere in the suit property. Hence, he filed an application seeking for appointment of Advocate Commissioner in I.A.No.219 of 2020 to inspect the suit property and measure the same with the aid of qualified surveyor which would be helpful to adjudicate the issue in dispute. He would further submit that I.A.No.269 of 2014 was filed by the petitioner / plaintiff for appointment of Advocate Commissioner before amendment application was filed. The present petition is filed after the plaint was amended and therefore, the dismissal of the earlier application has no bar to file a second application for appointment of Advocate Commissioner. He further submitted that Exs.A1 to A5 proves the title and possession of the petitioner / plaintiff in the suit property. The trial Court without considering the above said facts erroneously dismissed the application. Hence, he has filed the present



CRP(PD)(MD).No.1156 of 2021

revision for setting aside the order passed in I.A.No.219 of 2020.

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4. On the other hand, the learned counsel appearing for the respondent / defendant would submit that since the earlier application in I.A.No.269 of 2014 for appointment of Advocate Commissioner was dismissed, the second application is not maintainable. It is further submitted that the petitioner / plaintiff has taken in-consistent stand in the present application, which is contrary to the averments made in the title documents. Moreover, the said application is after a lapse of six years and therefore, the trial Court has rightly dismissed the application which calls for no interference.

4. I have heard the learned counsel appearing on either side and perused the materials available on record.

5. The specific contention of the revision petitioner / plaintiff is that on 25.10.1991 and 13.10.1992 the petitioner / plaintiff purchased 2 Acres 19 cents and patta was also issued in his favour. The said property is situated in S.No.2015/1 and the total extent is 2 Acres 37 cents. Out of 2 Acres 37 Cents, now, 18 Cents was acquired by the Highways



CRP(PD)(MD).No.1156 of 2021

Department and the remaining 2 Acres 19 cents was purchased by one Nandhagopal on 26.04.1982 under the registered sale deed.

6. The plaintiff further submits that in the said S.No.2015 / 1, the total extent is 2 Acres 37 Cents was belonging to one Ramachakowder. Since 18 Cents belongs to Highways Department, the plaintiff has purchased the 2 Acre 19 Cents in the said Survey Number from the legal heirs of the deceased Nandhagopal. Whereas the specific defence of the respondent / defendant is that the Highways department had acquired only 8 Cents and 10 Cents was purchased by defendant . The above said fact has to be established only by oral and documentary evidence and objected for local investigation by the Advocate Commissioner under Order 26 Rule 9 CPC.

7. It is well settled law that the Advocate Commissioner cannot be appointed to collect the evidence and it is for the parties to prove the case by oral or documentary evidence. The parties of the suit has to prove by examining evidence and documents and not from the report of the Advocate Commissioner and the Court shall not appoint an Advocate Commissioner for taking measurement of the suit property in a mechanical



CRP(PD)(MD).No.1156 of 2021

manner without considering the needs for appointment of an Advocate Commissioner. Therefore, the Court below has rightly dismissed the application filed by the petitioner / plaintiff, which calls for no interference.

9. In the result, this Civil Revision Petition is dismissed by confirming the order, dated 08.02.2021 made in I.A.No.219 of 2020 in O.S.No.124 of 2013 on the file of the District Munsif, Uthamapalayam. No costs. Consequently, the connected Miscellaneous Petition is closed.

29.09.2023

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To

The District Munsif, Uthamapalayam.



CRP(PD)(MD).No.1156 of 2021



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CRP(PD)(MD).No.1156 of 2021

K. GOVINDARAJAN THILAKAVADI, J.,

trp

Pre-Delivery order made in
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29.09.2023