



C.R.P.(MD) No.553 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2023

CORAM:

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

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and

C.M.P(MD) No.11557 of 2022

Kumarapillai (died)

Bhargavi Amma (died)

Santhakumari (died)

Madhavan Pillai (died)

1.Vasanthakumari Amma

Vijayakumari (died)

2.Radhakumari

3.Radhakrishnan

4.Geetha

5.Sheeba

... Petitioners/Petitioners/
Petitioners/Plaintiff

6.Deepa Kumar

7.Uma

8.Anil Kumar

... Petitioners/LRs of deceased Vijayakumari
6th petitioner in E.A.No.381 of 2015

Vs.

The State of Tamil Nadu



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Represented by the District Collector,
Kanyakumari District, Nagercoil. ... Respondent
(Cause title accepted vide Court order dated 06.09.2019
made in C.M.P(MD)No.8085 of 2019)

Prayer :- Petition filed under Section 115 of the Code of Civil Procedure, to set aside the order passed in E.A.No.381 of 2015 in E.P.No.28 of 2003 in O.S.No.218 of 1979, dated 25.04.2019, on the file of the Principal District Munsif Court, Kuzhithurai.

For Petitioners : Mr.C.Godwin

For Respondent : Mr.G.Suriyananth
Additional Government Pleader

ORDER

This civil revision petition is preferred by the petitioners, who is the plaintiffs in O.S.No.218 of 1979 as against the order passed in E.A.No.381 of 2015 in E.P.No.28 of 2003 in O.S.No.218 of 1979, dated 25.04.2019, on the file of Principle District Munsif Court, Kuzhithurai.

2.The petitioners as plaintiffs have filed the above the suit in O.S.No.218 of 1979 on the file of the Additional District Court, Kuzhithurai, for the relief of declaration of title, permanent injunction and to set aside the resurvey done and for demarcation of boundary except the southern boundary in respect of the suit property, comprising



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in Old Survey No.2814 AD, Edaicode Village, Vilavancode Taluk. A decree was passed in favour of the petitioners/plaintiffs. The petitioners/plaintiffs thereafter filed E.P.No.28 of 2003 for demarcation of boundaries. An Advocate Commissioner was appointed for demarcating the boundaries. But the Advocate Commissioner could not execute the work for want of old survey plan for demarcation of boundaries. Hence, the petitioners/plaintiffs filed E.A.No.381 of 2015 to demarcate the boundaries on the basis of Plan No.2 preferred in O.S.No.04 of 1956 and the same was objected by the respondent/State. The said E.A.No.381 of 2015 was dismissed by the Executing Court, against which, the present revision petition is filed.

3. The learned counsel appearing for the revision petitioners would submit that the property can be measured on the basis of old survey plan, since the resurvey plan prepared by the Trial Court was set aside. Since the respondent/Government has submitted that, the old survey plan was not available with the Government, the only option available to measure the property on the basis of correlation statement and the survey plan available in the Collectorate of the concerned District.



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4. On the other hand, the learned Additional Government Pleader in the counter affidavit and in his arguments submitted that, the re-survey was set aside only on the ground that old survey plan was not produced by the State. The re-survey authorities have measured the land according to the actual possession and enjoyment of the plaintiffs in old Survey No. 2814 of Edaicode Village, included in the correlated resurvey Nos.251/11 and 250/17, having an extent of 0.11.5 hectare and 0.06.5 hectare respectively. The petitioners/plaintiffs were actually in possession and enjoyment of only 0.18.00 hectare. During re-survey, no portion of plaintiffs patta land was included in the adjoining poramboke land and no excess area was included in the already existed road poramboke. The petitioners/plaintiffs are claiming deficiency of area based on very old documents. The area claimed by the petitioners/plaintiffs should have been mingled with other patta lands owned by other co-owners of the same family. The petitioners/plaintiffs are claiming areas in road poramboke without examining the basic documents. The Executing Court has rightly dismissed the application filed by the petitioners/plaintiffs in E.A.No.381 of 2015 for the reason that the Plan



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No.2 cannot be relied upon. The learned Government Pleader would submit that if the order passed in E.A.No.381 of 2015 is set aside, thereby directing the Commissioner to execute the warrant to demarcate the boundaries as per Plan No.2, it would badly affect the utility of Melpuram-Panachamoodu road and create considerable damage and loss to Government and public. He would further submit that the property comprised in Old Survey No.2124 is a Government poramboke land even during old survey period. Later during re-survey settlement, the old survey No.2124 was correlated as follows:-

2124	250/16	0.04.00	அரசு புறம்போக்கு, பாதை
	251/10	0.05.50	அரசு புறம்போக்கு, சாலை

The Additional Government pleader would further submit that re-survey No.250/16 and 251/10 of Edaicode Village is a public road being enjoyed by the general public. Thus the petitioners/plaintiffs claim over re-survey No.250/16 and 251/10 are not tenable.

5. Heard on both sides and records perused.

6. The learned Additional Government Pleader himself admitted



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that, based on the appellate Court, the trial Court in O.S.No.218 of 1979 dated 14.01.1992 conferring right over the plaint schedule property, passed the decree in favour of the petitioners/plaintiffs cancelling the re-survey plan and ordered for demarcation of boundary of suit property except on the southern side. Therefore, the submissions made by the learned Additional Government Pleader that the demarcation of the boundary to be done with the help of re-survey cannot be accepted. Admittedly, the claim made by the petitioners/plaintiffs in E.P.No. 28/2003, to direct the Advocate Commissioner to execute the warrant as per plan No.2 was declined by the Executing Court. The next option left to the petitioners is to demarcate the boundaries with the help of old survey plan. Since it is admitted by the petitioners and respondent that the old survey plan is not available with the respondent, the only option now available is, to measure the property on the basis of correlation statement and survey plan, which are available in the Collectorate.

7. Reverting to the dispute before the Court, the nature of defence raised implies that both sides are under a burden to prove the case put forth by them and have to create options for the Court to employ the rule



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of preponderance of probability (Ref: S.A.(MD) No.194 of 2011).

The trial Court ought to have attempted to summon the correlation register and tried to ascertain where the property claimed by the petitioners/plaintiffs is located.

8. In the result, the order passed in E.A.No.381 of 2015 by the learned District Munsif, Kuzhithurai, is set aside and the Civil Revision petition is allowed directing the trial Court to call for the correlation statement and survey plan from the Collectorate and shall preferably appoint the same Commissioner, if he is available and is also willing to undertake the responsibility to demarcate the boundaries as per the correlation statement and survey plan and if he is not available, then to appoint a new Advocate Commissioner, direct him to do the above task. The parties are permitted to adduce oral and documentary evidence only to the extent needed for the purposes indicated above. No costs. consequently, connected miscellaneous petition is closed.

11.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes



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To

1.The Principal District Munsif,
Kuzhithurai.

2.The District Collector,
State of Tamil Nadu,
Kanyakumari District,
Nagercoil.



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K.GOVINDARAJAN THILAKAVADI, J.

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