



C.R.P(MD)No.1526 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **07.08.2023**

CORAM

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

C.R.P(MD)No.1526 of 2018

and

C.M.P(MD)No.6642 of 2018

1.Bhaskaran

2.Raja Ayinan Pillai

3.Ramachandran

...Petitioners/Petitioners/
Plaintiffs

Vs.

M.s.The Amalgamated Coal Fields Limited,
Registered Office at Kolkata,
Represented by its,
Authorized Signatory,
C.Sitaram,
S/o.C.V.Chandrasekar,
Flat No.A3, Lawson Apartments,
Lawson's Road, Cantonment,
Tiruchirappalli-620 001.

...Respondent/Respondent/
Defendant

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 01.02.2018 in I.A.No.333 of 2017 in O.S.No.1442 of 2015 on the file of the learned Principal District Munsif, Trichy.



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For Petitioners : Mr.K.Govindarajan

For Respondent : Mr.M.Saravanan

ORDER

This civil revision petition has been filed against the order passed by the learned Principal District Munsif, Trichy in I.A.No.333 of 2017 in O.S.No.1442 of 2015, dated 01.02.2018.

2. The petitioners are the petitioners/plaintiffs and the respondent herein is the respondent/defendant before the Court below.

3. For the sake of convenience, the parties will be referred as per the litigative status before the Trial Court.

4. It appears that the petitioners/plaintiffs have filed a suit for recovery of possession of the excess property described in the C schedule in the suit. While the suit is pending, the petitioners/plaintiffs filed an application for appointment of Commissioner to demarcate the limits of the C schedule property and to draw a plan.



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5. The said application was resisted by the respondent/defendant on the ground that the plaintiffs/petitioners have no right or title or interest in the suit property, and that the plaintiffs/petitioners already filed a suit in O.S.No.973 of 2014 for injunction, wherein, he did not get any leave to file the instant suit. Therefore, the present suit is hit by the principles under Order 2 Rule 2 of C.P.C. It is also the submission of the respondent/defendant that there is no C schedule property at all as stated by the plaintiffs. It was also contended before the Trial Court that this defendant/respondent is the owner of the property in S.F.No.8/7 to an extent of 4.99 cents by virtue of registered sale deed, dated 21.11.1962. Hence, the respondent/defendant prayed to dismiss the application.

6. After hearing either side, the Court below vide order dated 01.02.2018 has dismissed the application on the ground that when the petitioner has sold the property long back about 30 years ago, filing the application at the belated stage cannot be entertained, and that the similar application in O.S.No.973 of 2014 was dismissed. Therefore, there is no point in appointing the Commissioner in the instant application.



7. Aggrieved with the order of the Court below, the petitioners/plaintiffs are before this Court.

8. The learned counsel for the petitioners herein would vehemently submits that, after filing of the suit, the defendant has disputed the very identity of the property. Therefore, it necessitated them to file an application for an appointment of Commissioner to demarcate the C schedule property and he also relied on the judgment of the Hon'ble Supreme Court in the following cases:

(i) ***P.R.Chockalingam Vs M.Pichai and others*** reported in **2003-4-L.W.-77**. The relevant portion of the order is extracted hereunder:

"17. An analysis of the above judgments would lead to an irresistible conclusion that the appellate Court, while considering the application for appointment of commissioner, should not order the application for the sake of asking. Since the power could be exercised judicially, the proper application of mind to the facts of the case is essential before either ordering or rejecting such application. No hard and fast rule can be laid down that in all cases of application filed for appointment of commissioner, that it should be only heard along with the appeal and the Court should order the appointment of commissioner only in the event it satisfies for such commission during the hearing of the appeal. While the question of identity of the property is pleaded, it would be only proper for the Court to first collect the materials as to the identity of the property by way of a report from the commissioner to adjudicate the dispute at the time of hearing of the appeal."



(ii) *Sivagurunathan Vs Ramalingam and others* reported in (2005) 3 M.L.J. 525. The relevant portion of the order is extracted hereunder:

"11. In the petition, the plaintiff has sought for appointment of Advocate Commissioner to note down the physical features and also to measure the suit property with the help of surveyor and to submit a report with a plan drawn to scale. But the learned District Munsif dismissed the application on the ground that the application has been filed seeking for issuance of commission to note down the possession and the existence of house. There is no proper exercise of discretion and the impugned order suffers from serious infirmity. when the location of the plaintiff's property and the extent is denied, Commissioner ought to have been appointed for effectively adjudicating the dispute. Report of the Advocate Commissioner and the plan drawn to scale would considerably reduce the oral evidence which aspect was not taken into consideration by the lower Court.

12. When the controversy between the parties is about the area of the land or the identification or the location of the land, local investigation by a Commissioner is necessary. It would clarify the location and extent in which the plaintiff is in possession and would explain any doubtful points on the evidence on record. When there is a dispute over the extent, measuring of the suit property with the help of Surveyor and the plan thereon would considerably reduce the oral evidence. The object of local investigation is to obtain evidence which could be based on only from the spot and the inspection. Report of the Advocate Commissioner would enable the Court to properly and correctly understand and assess the evidence on record in resolving the contentious points.

13. Issue of commission to find out the location of 22 cents viz., whether it is situated in S.No.151/16A or in other survey number is a necessary one and it would not amount to collection of evidence or factum of possession.



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Where the dispute is regarding the extent of suit property, the trial Court ought to have appointed the Commissioner directing him to measure the suit property with the help of a qualified Surveyor."

9. Per contra, the learned counsel for the respondent would submit that the petitioners initially filed a suit for injunction in O.S.No.973 of 2014 and during the pendency of the said suit, they came with the instant suit for relief of recovery of possession. It is also submitted by the learned counsel for the respondent that the earlier suit in O.S.No.973 of 2014 has been dismissed for default. Therefore, he prayed to dismiss the instant application.

10. I have given my anxious consideration to either side submissions.

11. From the perusal of the record, it is apparent that the plaintiffs have already filed a suit in O.S.No.973 of 2014 for a relief of injunction. However, as submitted by the learned counsel for the respondent, the said bare injunction suit was dismissed on 28.02.2019. But, while perusing the plaint, this Court could not find any semblance of pleadings, as to when onwards the defendant was in possession of the suit property so as to get the delivery of possession from the defendant. As rightly



observed by the Court below, when the sale transaction took place long back about 30 years ago between the plaintiffs predecessor in title and the respondent, after period of three decades coming forward to measure the property that too prior to prove his right of recovery of possession from the defendant could not be entertained.

12. It is pertinent to mention here that if at all any demarcation of the property required, it could be only at the time of taking delivery of the property and not at this stage. The rulings referred by the learned counsel for the petitioners are in respect of suit for injunction, and facts in those reported cases are not similar to the case on hand. Therefore, this Court is of the firm view that the order passed by the learned Trial Judge rejecting the appointment of Commissioner could not be found fault with.

13. In the result, this Civil Revision Petition stands **dismissed**. No costs. Consequently, connected miscellaneous petition is closed.

07.08.2023

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

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- 1.The learned Principal District Munsif,
Trichy.
- 2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN,J.

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