



WEB COPY



C.R.P(PD)(MD).No.756 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.04.2023

Pronounced on : 07.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.756 of 2017

Jamia Majid,
Mela Kavery,
Kumbakonam Town
through its Secretary
M.B.Oli Mohammed.

... Petitioner/Plaintiff

Vs.

1.M.Jamsith Batcha
2.Anwar Batcha
3.A.Dhilshath Begam

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment of the Wakf Tribunal/ Principal Sub Court, Thanjavur in W.O.P.No.07 of 2007 dated 17.10.2016 by allowing this Civil Revision Petition.

For Petitioner : Mr.V.Maragathavel

For Respondents : Mr.J.Balameenashi



ORDER

This Civil Revision Petition is filed against the judgment dated 17.10.2016 passed in W.O.P.No.7 of 2007 on the file of the Wakf Tribunal/Principal Sub Court, Thanjavur.

2. The brief facts of the case:

The revision petitioner is the plaintiff in W.O.P.No.7 of 2007 on the file of the Wakf Tribunal/Principal Sub Court, Thanjavur. The petitioner sought the relief of declaration and mandatory injunction to remove the encroachment made by the respondents. The respondents filed written statement. During trial, the petitioners examined P.W.1 and marked Ex.P.1 to Ex.P.5 and the respondents examined D.W.1 and marked Ex.D.1 to Ex.D.9. After hearing both and after considering the evidence, the Trial Court passed judgment dated 17.10.2016 by dismissing the petition. Aggrieved by the order of the Trial Court, the petitioner has filed this Civil Revision Petition.

3. Heard both sides and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner has submitted that the petitioner has filed W.O.P.No.7 of 2007 for declaration



WEB COPY

and mandatory injunction. The respondents encroached the property in dispute. The petitioner side documents have clearly mentioned about the boundaries. There is no dispute regarding the boundaries. When there is a dispute in respect of extent of property between two parties, the boundaries would prevail. In this case, there is no dispute regarding the boundaries. The Trial Court has not appreciated the documentary evidence adduced by the petitioner and has come to the wrong conclusion. Therefore, the judgment of the Trial Court has to be set aside. In support of his argument, the learned counsel for the petitioner has relied on the citation as follows:

(1) 1978 MLJ 620 (The Church of South India Trust Association through its power of Attorney Agents Rev. C.E.Soundiraraj and another /vs/ Raja Ambrose (died) and another), wherein it is held in paragraph No.6 as follows:

“...If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact positioning of the property conveyed, but also its true extent. The boundaries given in the deed will also, in such cases, prevail over the measurements given in the deed, if these are given as approximations.”

(2) 1984 MLJ 306 (Dina Malar Publication, a Tamil Daily represented by its partner R.Krishnamoorthy /v/ The Tiruchirappli



Municipality represented by its Executive Authority, the Commissioner and Ors.), wherein it is held in paragraph No.9 as follows:

“...(1) In case of doubtful or varying extents in documents of title relating to the property, boundaries should be preferred to the extent; (2) Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent mentioned in the document.....” .

5. Per contra, the learned counsel for the respondents contended that the petitioner has filed the main suit for declaration of title over the property. If so, the petitioner has to prove its title over the property. The petitioner has not established title over the property. Both side adduced evidence. The petitioner claims title over the property on the basis of Ex.P.5 - Sale Deed said to be executed by one Salima Beevi thereby conveyed north-south 22 feet. Whereas the said Salima Beevi has purchased the property by virtue of Ex.D.9, wherein the property conveyed was only north-south 18 feet. At this situation, the citation will not be applicable to this case. The trial Court has correctly passed the judgment and the same does not warrant interference and therefore, this Civil Revision Petition may be dismissed.



WEB COPY

6. On hearing both and on perusal of order of Trial Court, it is clear that there is dispute between the parties in respect of suit property measuring 90 sq.ft i.e., east-west 30 feet and north-south 3 feet. The petitioner claims title over the property by virtue of Ex.A.4 – Settlement Deed dated 12.01.1977 executed in favour of the petitioner by one Mohameed Ibrahim, who purchased the same by way of Ex.A.5 - Sale Deed dated 12.03.1947. On perusal of Ex.A.5, it is clear that the said Mohammed Ibrahim had purchased the property from one Salima Beevi. On the side of the respondents, Ex.D.9 - Sale Deed dated 08.01.1945 is marked. On perusal of the same, the said Salima Beevi has purchased the property from one Habib Batcha. It is the case of the respondent that the Salima Beevi has purchased only north-south 18 feet, who in turn sold the property by mentioning north-south 22 feet. So, based on those documents, the plaintiff has not established the actual extent by producing parent document. On perusal of citation **1984 MLJ 306**, it is clearly held in paragraph No.9 that “ if the recitals in the documents and the circumstances of the case show that a lesser extent only was conveyed than the area covered by the boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries.” Here in this case, the area more than the actual extent has been seen to be sold under Ex.A.5. In such circumstances, it is the duty of the petitioner to make a rectification deed by making clear the extent, whether it



C.R.P(PD)(MD).No.756 of 2017

is north-south 18 feet or north-south 22 feet. It is a settled principle of law that a party who seeks for declaration of title over the property must prove his title by producing acceptable documents. In this case, the petitioner has not proved its title over the property as rightly held by the Trial Court. Therefore, the impugned judgment of the Trial Court is correct and the same need not to be interfered by way of this Civil Revision Petition.

7. In the result, this Civil Revision Petition is dismissed. No costs.

07.07.2023

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

To

1. The Principal Sub Court,
Thanjavur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(PD)(MD).No.756 of 2017

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(PD)(MD).No.756 of 2017

07.07.2023