



WEB COPY



C.R.P.No.36 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	16.02.2024
PRONOUNCED ON	:	03.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P.No.36 of 2022
and C.M.P.No.235 of 2022

G. Valarmathi

.... Petitioner

VS

1. The Municipal Commissioner,
Ayyanar Kovil Street,
Vridhachalam Town and Taluk,
Cuddalore District.
2. The Thasildar,
Cuddalore Road,
Vridhachalam Town and Taluk,
Cuddalore District.
3. The Revenue Divisional Officer,
Cuddalore Road,
Vridhachalam Town and Taluk,
Cuddalore District.
4. The District Collector,
Semmandalam, Cuddalore District.
5. The District Revenue Officer,
O/o Collectorate, Cuddalore District.

...Respondents



C.R.P.No.36 of 2022

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, against the Fair and Decreetal order dated 29.04.2021 made in I.A. No.374 of 2019 in O.S.No.263 of 2019 on the file of I Additional District Munsif Court, Virdhachalam, Cuddalore District.

For Petitioner : Mr.C.Prabakaran

For R-1 : Mr. D. Gopal, Government Advocate

For RR 2 to 5 : Dr.S.Suriya,
Addl. Govt. Pleader (CS)

ORDER

Challenging the fair and decreetal order, dated 29.04.2021 made in I.A.No.374 of 2019 in O.S.No.263 of 2019 on the file of I Additional District Munsif Court, Virdhachalam, Cuddalore District, the petitioner has preferred the present civil revision petition.

2. According to the learned counsel for the revision petitioner, I.A. No.374 of 2019 was filed under Order XXVI Rule 9 of the Civil Procedure Code seeking for the appointment of Advocate Commissioner to measure the suit property with the help of the Surveyor pertaining to the physical features of the suit property and to file a report with sketch.



C.R.P.No.36 of 2022

WEB COPY

3. It is averred in the petition that earlier the petitioner's son G. Sivasankaran had purchased the petition property from one power agent named Leelavathy, through a deed of sale registered on 24.01.2002 and he was in possession and enjoyment of the same. On 25.09.2003, the petitioner got the property executed in his favour through the 2nd respondent/ Thasildar, Cuddalore District. After a long period of 15 years from the date of the aforesaid purchase and more than a lapse of 12 years, the 1st respondent herein had issued a patta by revising the earlier measurements of the land, i.e. the area of the petition property has been assigned as 00777 sq. mt. by reducing an area of 00023 sq.mt from it, instead of the original 00800 sq.mt, wherein the first respondent has stated that the earlier measurements were wrongly analysed based on FMB sketch.

4. According to the learned counsel for the petitioner, neither the petitioner nor his son G.Sivasankaran were given any notice in this regard. The Revenue Authorities have granted patta on 25.09.2003 and likewise the 1st respondent also without mentioning any diminution in the area of the property, has granted DTCP approval on 11.12.2006. Suddenly on 26.02.2018 without any spot inspection or measuring the property, the 1st respondent, under the influence of some local people and revenue officials, has issued forged patta



C.R.P.No.36 of 2022

document dated 26.02.2018. In this regard, the petitioner has issued a notice to the 1st respondent on 17.06.2019, but there is no response from the respondents side. Hence, the petitioner was constrained to file a suit in O.S.No.263/2019 for issuance of patta with correct measurements, based on the sale deed and patta issued on 26.09.2003 by the Revenue Authorities.

5. Pending suit, the petitioner preferred an interlocutory application in I.A.No.374/2019 in O.S.No.263/2019 seeking for the appointment of Advocate Commissioner to inspect the property subject to issue and to file necessary and reasonable report and a map of the property with appropriate measures and structures with the help of a surveyor, but the same came to be dismissed by the Court below vide order dated 29.04.2021. Aggrieved against the said order of dismissal, the present revision petition has been filed.

6. The main contention of the revision petitioner is that the measurement is the only way to decide the actual lis in the suit. As per Order XXVI Rule 9 of the Civil Procedure Code, conducting local investigation regarding the suit property and finding out the physical features in order to decide the actual lis between the parties of the suit is very much essential, which the Court below failed to consider. He also stated that the learned Judge misconstrued the



C.R.P.No.36 of 2022

purpose of the application filed by the petitioner and considered the same as a process for collection of evidence. But according to the petitioner, already patta has been granted in favour of the petitioner and the subsequent patta which was issued thereafter, was with lesser extent of area, without conducting field inspection and earlier measurements. Hence, the learned counsel for the revision petitioner prayed to set aside the impugned order made in I.A.No.374 of 2019 in O.S.No.263 of 2019 on the file of I Additional District Munsif Court, Virdhachalam, Cuddalore District and thereby allow the revision petition.

7. Per contra, the learned Additional Government Pleader appearing for the respondents strongly objected and pointed out that the petition is unsustainable in law and equity. The petitioner has to prove the petitioner's case by submitting original documents related to the petitioner's property such as birth certificate, sale deed, patta, chitta, adangal, ration card, aadhaar card etc, but he has approached this Court by way of filing this revision petition without any proof, which is to be dismissed with costs. The learned Additional Government Pleader further submitted that the 1st respondent has served summons upon the petitioner to appear on 25.02.2021 regarding the dispute,



C.R.P.No.36 of 2022

but he failed to appear for the same. Hence, the learned Additional Government Pleader prayed for dismissal of the revision.

8. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader appearing for the respondents and perused the materials placed before this Court.

9. The learned Judge, trial Court found that the property in dispute and possession in dispute should be established through appropriate witnesses and evidence only and not by appointing Advocate Commissioner, whereas, this Court in ***Pillaiyar v. Ganesan and another***, reported in **1999 MLJ (Supp.) 432**, by invoking Order 26 Rule 9 of the Code of Civil Procedure for the appointment of an Advocate Commissioner has held that, “No doubt, there can be no appointment of Commissioner for collecting evidence or gathering materials. However, the object of a Commission under Order 26 Rule 9 of the Code of Civil Procedure is not to collect evidence, which has to be done only by the Court, but for elucidating matters which are local in character, which can be done only by local investigation at the spot.



C.R.P.No.36 of 2022

WEB COPY

10. Similarly, in *Sivagurunathan Vs. Ramalingam and Others* reported in **(2005) 3 MLJ 525**, this Court has held as follows:

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.”

11. In the present case on hand, it is seen that a real dispute had arisen in view of the measurement of the petitioner's land, wherein the area of the petition property has been assigned as 00777 sq. mt. by reducing an area of 00023 sq.mt from the original area of 00800 sq.mt by the first respondent by stating that the area was wrongly ascertained based on the FMB sketch.



C.R.P.No.36 of 2022

Therefore, there is an issue which had arisen that requires elucidation and this is local in character and can only be done by local investigation at the spot. The assistance of a Taluk Surveyor would certainly clear the doubt whether the property conveyed to the petitioner has the total area of 00777 sq. mt. or the original area of 00800 sq.mt. It can be easily verified by looking to the boundaries found in the documents of sale. Identification of the property can only be done by a Taluk Surveyor and the presence of an Advocate Commissioner would only give further authenticity. This would certainly help the learned District Munsif to give a fair judgment with respect to the issues raised in the suit. It is no doubt true the application had been filed at a late stage. However, the report of the Advocate Commissioner would certainly not affect the existing evidence already recorded and let in by the parties. The Advocate Commissioner is only an officer of the Court.

12. In view of these reasons, the order of the learned I Additional District Munsif Court, Virdhachalam, Cuddalore District is set aside and the matter is remitted back to the file of the learned I Additional District Munsif Court, Virdhachalam, Cuddalore District for appointment of an Advocate



C.R.P.No.36 of 2022

Commissioner to inspect the property along with the Taluk Surveyor and file necessary report.

13. The Advocate Commissioner should follow the procedures set out by issuing notice to the parties to the suit and to the learned counsels. The expenses of the Advocate Commissioner should be borne by the present Revision Petitioner / Plaintiff and this Court leaves it to the discretion of the learned I Additional District Munsif Court, Virudhachalam, Cuddalore District to nominate the Advocate Commissioner and to decide the remuneration.

14. The learned I Additional District Munsif Court, Virudhachalam, Cuddalore District, may, after taking up the report of the Advocate Commissioner also grant necessary opportunity to all the parties to file their objections and if necessary, shall summon the Advocate Commissioner for examination. However, this would not give any right to either the plaintiff or the defendants to reopen the existing evidence which had already been recorded. That evidence still stands and would continue to stand. It cannot be added. It should be analysed and such analysis should be done keeping in mind the report of the Advocate Commissioner.



C.R.P.No.36 of 2022

WEB COPY

15. The learned I Additional District Munsif Court, Virudhachalam, Cuddalore District, should give necessary opportunity to the plaintiff and the defendants to advance arguments and thereafter deliver judgment. The directions stated above may be strictly followed by the learned I Additional District Munsif Court, Virudhachalam, Cuddalore District.

16. With the above observations, the Civil Revision Petition is allowed. No order as to costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

03.06.2024

sts

Index : Yes / No

Internet : Yes / No

To:

The I Additional District Munsif Court,

Virudhachalam, Cuddalore District.



WEB COPY



C.R.P.No.36 of 2022

J. NISHA BANU, J.

sts

Order made in
C.R.P.No.36 of 2022

Dated:
03.06.2024