



C.R.P.PD.No.3413 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.09.2024

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.R.P.PD.No.3413 of 2022

and

C.M.P.No.18132 of 2022

1.S.A.Elango Vedantham

2.Vasantha Elango

... Petitioners/Plaintiffs

Vs.

1.Srinivasa Rao

2.Narayanareddy

... Respondents / Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order passed by the District Munsif cum Judicial Magistrate No.1, Hosur in I.A.No.1 of 2019 in I.A.No.300 of 20125 in O.S.No.62 of 2012 dated 22.06.2022 in dismissing the application filed seeking to re-open the commission petition and to reissue of the commission warrant to the same advocate commissioner to revisit and file proper report.

For Petitioners : Ms.A.Abirami
for M/s.V.Srimathi

For Respondents : Mr.M.Venkatesh



C.R.P.PD.No.3413 of 2022

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ORDER

This Civil Revision Petition has been preferred by the plaintiffs aggrieved by the orders passed in I.A.No.1 of 2019 in I.A.No.300 of 2012 in O.S.No.62 of 2012 dated 22.06.2022 on the file of the District Munsif cum Judicial Magistrate No. 1, Hosur.

2. Heard Ms.A.Abirami, learned counsel appearing for the petitioners and Mr.M.Venkatesh, learned counsel appearing for the respondents.

3. The revision petitioners/plaintiffs filed a suit in O.S.No.62 of 2012 before the above said Court for the following reliefs:

(i) For declaration of title of the 1st plaintiff to 'A'-schedule property.

(ii) For declaration of title of the 2nd plaintiff to the suit 'B'-schedule property.

(iii) to grant permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession and enjoyment of the plaintiffs in respect of the suit 'A' and 'B' schedule properties.

The description of property details found in the plaint are extracted hereunder:



C.R.P.PD.No.3413 of 2022

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DESCRIPTION OF PROPERTY

In Krishnagiri District, Hosur Taluk, Eluvappalli Village S.No.2/2,
dry, extent 2.21 acres land assessment Rs.3.03.

'A' Schedule

In this AN EXTENT OF 1.11 ACRE, assessment Rs.1.52

East : S.No.2/3A
West : S.No.1-Poramboke Land
North : Jeemangalam Village limit.
South : 2nd Plaintiff's land (item No.2)

'B' Schedule

AN EXTENT OF 1.10 ACRE, assessment Rs.1.51

East : S.No.2/3B
West : S.No.1-Poramboke Land
North : 1st Plaintiff's land (item No.1)
South : Cart Track(S.F.No.27)

4. While so, the revision petitioners/plaintiffs moved an application under Order 26 Rule 9 of CPC in I.A.No.300 of 2012 for appointment of Advocate Commissioner to visit the suit property, to locate the suit property and to note down the physical features, the encroachment



C.R.P.PD.No.3413 of 2022

WEB COPY

portion and to submit his report with a plan drawn to scale.

5. The same was ordered by the trial Court by appointing Advocate Commissioner to visit and locate the suit property, to note down the physical features by measuring the petition mentioned properties with the help of qualified Surveyor with necessary revenue records. Due compliance to the order of the trial Court, the Advocate Commissioner filed his report dated 20.11.2017 with a rough plan.

6. The petitioners herein have also filed their objections dated 21.03.2018. Thereafter, an application in I.A.No.1 of 2019 was filed seeking to reopen the Commission petition and to reissue Commissioner Warrant to the same Advocate for revisit and to file proper report.

7. For which, the respondents stoutly raised their objections by filing counter by stating that at the time of inspection, the Advocate Commissioner measured the suit land with the help of qualified Surveyor and located the encroached portion and in Survey No.2/3A belongs to the 1st defendant by virtue of registered sale deed Doc.No.13055 of 2008. The encroached portion has been marked as BHG in the plan and



C.R.P.PD.No.3413 of 2022

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prayed to dismiss the petition.

8. The trial Court dismissed the petition stating that in a suit for declaration and permanent injunction, it is the duty of the plaintiffs to establish their case through document and oral evidences and the petitioners cannot be allowed to collect evidence through reissue of Commissioner Warrant in order to establish their case or for developing their case.

9. As mentioned supra, suit has been filed for declaration of title and for permanent injunction not to interfere with the peaceful possession and enjoyment of the properties.

10. Ms.A.Abirami, learned counsel appearing for the revision petitioners would contend that as pointed out by the Advocate Commissioner in his report that he is not in a position to collect the plan from the revenue officials and that may be ordered to be filed by re-issue the warrant to the same Advocate Commissioner. In order to buttress her arguments, the following judgment was referred to:

Ponnusamy Pandaram v. The Salem Vaiyappamalai Jangamar



C.R.P.PD.No.3413 of 2022

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Sangam, represented by its President Palanivel reported in 1998 LW 112, wherein, the object of local investigation under Order 26 Rule 9 of CPC has been discussed by this Court. The relevant portion of the said order is culled out and mentioned hereunder:

"5.The object of local investigation under O.26, R9 of the Code cannot be belittled. Its object is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in court but could be taken only from its peculiar nature, on the spot. This evidence will elucidate a point which may otherwise be left in doubt or ambiguity on record. The Commissioner, in effect, is a projection of the court, appointed for a particular purpose. In this regard, the implication of O.26, R.10 cannot be lost sight of when it says that the report of the Commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record. We are not very much concerned with the (sic) probative value of the report of the Commissioner."

11. Mr.M.Venkatesh, appearing for the respondents would reply that when the suit is filed for the relief of declaration of title and for possession, upon application of the plaintiffs under Order 26 Rule 9



C.R.P.PD.No.3413 of 2022

CPC, the Advocate Commissioner was appointed and he has executed his warrant and only in order to protract the proceedings, this petition is filed.

12. In general, in a suit for declaration of title and for permanent injunction, not to disturb the peaceful possession and enjoyment of the suit property, the burden lies on the plaintiffs to prove their case. However, depending upon the issue involved in a suit, the plaintiffs may resort to file an application under Order 26 Rule 9 CPC.

13. On a careful perusal of the report of the Advocate Commissioner, he has stated that despite several reminders, he is not in a position to collect the plan and upon the direction of the trial Court, he filed his report along with rough plan.

14. Suit is filed in the year 2012. I.A.No.300 of 2012 was filed in 2012 and the same was ordered in the year 2013. The warrant was issued on 29.04.2013 to the Advocate Commissioner and report was filed only on 20.11.2017. The purpose behind the appointment of Advocate Commissioner is that the evidence available to appoint



C.R.P.PD.No.3413 of 2022

WEB COPY

Advocate Commissioner would enable the Court to properly and correctly understand and assess the evidence on record in order to arrive at a proper conclusion.

15. In this case, the Advocate Commissioner was appointed and he has filed his report along with the plan and he has specifically stated in his report that he was not able to collect the plan from the revenue officials. Re-issue of the Commissioner warrant would arise only if recourse is taken under Order 26 Rule 10 of CPC. In this case, considering the issue involved in the matter, the plaintiffs are at liberty to examine the revenue officials.

16. Based on the aforesaid discussions and submissions, I do not find any valid reason to interfere with the orders passed by the learned trial Judge.

17. In the result, this Civil Revision Petition stands dismissed. As the suit is of the year 2012, the learned trial Judge is directed to complete the trial and dispose of the suit preferably within a period of eight (8) months from the date of receipt of a copy of this order. There is



C.R.P.PD.No.3413 of 2022

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no order as to costs. Consequently, connected civil miscellaneous petition is closed.

30.09.2024

Index : Yes / No
Neutral Citation Case : Yes / No
Speaking Order / Non-Speaking Order
ssn

To

The District Munsif cum Judicial Magistrate No.1,
Hosur.



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C.R.P.PD.No.3413 of 2022

R.KALAIMATHI, J.,

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C.R.P.PD.No.3413 of 2022
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