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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.10.2024

CORAM

THE HONOURABLE Mr. JUSTICE

V.LAKSHMINARAYANAN

C.R.P.(PD).No. 4175 of 2024
&
C.M.P.No.23088 of 2024

N.Selvadurai ...Petitioner

Vs.

1.N.Balasubramani Chettiyar

2.B.Balaji

3.The District Collector,
Chinna Ekkadu, Jaya Nagar, Thiruvallur,
Tamil Nadu 602 001.

4.The District Revenue Officer,
Bharathiyar St., SP Nagar, Thiruvallur, Kakkalur,
Thiruvallur,
Tamil Nadu 602003.

5.The Revenue Divisional Officer,
Bharathiyar St., SP Nagar, Kakkalur,

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Tiruvallur,
Tamil Nadu 602003.

6.The Tahsildar,
JN Road, NH 716, Thiruvallur,
Tamil Nadu ...Respondents

Prayer: Petition is filed under Article 227 of the Constitution of India to set aside the impugned order dated 08.12.2023 passed in I.A.No.9 of 2023 in O.S.No.49 of 2020, passed by the learned Additional District Munsif, Tiruvallur.

For Petitioner	:	Mr. S.P.Srinivasan
For Respondents 3 to 6	:	Mr. R.Siddharth Government Advocate.

ORDER

This Civil Revision Petition arises against the order passed by the learned Additional District Munsif, Tiruvallur, in I.A.No.9 of 2023

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in O.S.No.49 of 2020 dated 08.12.2023.

2. The civil revision petitioner is the plaintiff in the suit. O.S.No.49 of 2020 was filed for the relief of permanent injunction restraining defendants from interfering with the peaceful possession and enjoyment of the suit property, which he purchased by way of registered sale deed from one Amirthammal in the year 1983. His vendor Amirthammal had obtained title to the property by way of purchase in the year 1959.

3. The plaintiff added that on 14.03.2020 on account of the fact that the defendants attempted to encroach upon the southern side of the property, he came forth with the present suit for bare injunction. His claim is that he is entitled to 3964 sq.ft., in Old Survey No.468/1A1, re-numbered New Survey No.5/5 at Periyakuppam

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Village, Tiruvallur Taluk, Tiruvallur District.

4. The defendants entered appearance and filed a written statement. They accepted that the suit property is situated in Survey No.468/1A1, New Survey No.5/5 as pleaded in the plaint. It is their case that they are in occupation of the property on the southern side which is owned by one Padmini who had purchased the property from one Kanakavalli Ammal. They do not dispute the title of the plaintiff over the gramanatham but only disputed the extent of the area covered by gramanatham. They agreed that if an Advocate Commissioner is appointed, it will put an end to the dispute.

5. On these pleadings, the plaintiff took out an application for appointment of an Advocate Commissioner in I.A.No.3 of 2021. The said application was allowed and the Advocate Commissioner has also visited the suit property on 01.07.2022. He was accompanied by the Surveyor who had measured the property and submitted a report and

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plan. Immediately, the plaintiff filed an objection pleading that the surveyor had not brought the original records necessary for the measurement. Instead, he measured the property on the basis of the present FMB. The plaintiff pleads that if the old FMB records are produced it would show that the extent of gramanathan as 3964 sq.ft., and not 3100 sq.ft., as found in the present records.

6. After having filed his objections, he took out an application for amending the plaint to add the prayer of declaration of title and also to implead the state respondents 3 to 6 herein. The learned Trial Judge returned this amendment petition stating that the petition to amend the plaint is not maintainable without filing an implead petition. Instead of pursuing that application, the plaintiff seems to have taken the return made by the learned Trial Judge, and on legal advice, filed an application in I.A.No.9 of 2023 to implead respondents 3 to 6.

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7. The learned Trial Judge passed an order on 08.12.2023 holding that the proposed parties are neither necessary nor essential to adjudicate upon the matter. Consequently, the application was dismissed holding that it had been filed for the purpose of dragging on the trial. Aggrieved by the same, the present petition has been filed.

8. Heard Mr.S.P.Srinivasan for the civil revision petitioner and Mr.R.Siddharth, Government Advocate for respondents 3 to 6.

9. The narration of the above facts would show that the grievance of the petitioner is that he is entitled to an extent of 3964 sq.ft., in Old S.No.468/1A1, New S.No.5/5. However, at the time of granting of patta, the revenue authorities had issued patta only for 3100 sq.ft., leaving out 864 sq.ft., from his holdings. In order to rectify the said revenue records, the plaintiff had also approached this Court by way of Writ Petition in W.P.No.10835 of 2008, seeking

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mandamus to consider the representation seeking for correction in the revenue records dated 29.01.2008. The Writ Petition was disposed of directing the Government to consider the representation.

10. However, Mr.S.P.Srinivasan pleads that the said representation had not been disposed of. He adds that taking advantage of the patta had been issued for the lesser extent, the defendants are attempting to encroach upon the property.

11. I have put a question to Mr.S.P.Srinivasan as to *whether the Government is interfering with the possession of the plaintiff?* He answered that the Government is not interfering with the possession and it is the defendants who are. If the Government is not interfering with his possession, the Government is neither a necessary nor proper party to the proceedings.

12. Therefore, I do not find any reason to interfere with the

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order of the learned Trial Judge, dismissing the application to implead the Government. Having said this, I have to state I am not ad idem with the entire reasoning given by the learned Trial Judge. The grievance of the plaintiff is that the surveyor has not submitted the report on the basis of the original revenue records available with him. The plaintiff, being an ordinary citizen, would obviously not have original FMB for the suit property. It is in the custody of the revenue authorities, namely, respondents 3 to 6. For the purpose of production of the revenue records, the respondents 3 to 6 need not to be impleaded as party to the proceedings.

13. Mr.R.Siddharth, Government Advocate assures that the revenue authorities will produce the original records before the Trial Court.

14. I had a look into the affidavit in I.A.No.9 of 2023 and the objection filed to the Advocate Commissioner's report. A bare perusal

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of the same would show that both are one and the same. The objection filed to the Advocate Commissioner's report cannot be utilised for the purpose of impleading the revenue authorities. While dismissing the revision holding that respondents 3 to 6 are not proper and necessary parties to the proceedings, I give the following directions:

(i)The learned Trial Judge shall consider the objection that has been filed by the plaintiff to the Advocate Commissioner's report in I.A.No.3 of 2021 in O.S.No.49 of 2020, in terms of the order passed by this Court in ***Vemba Gounder Vs. Pooncholai Gounder - AIR 1996 Madras 347****, in particular reference to paragraph Nos.30 and 31 of the said Judgement.*

(ii)If the plaintiff demonstrates before the Trial Court that the Advocate Commissioner and the Surveyor have not produced the old survey records for the suit property and had produced only the new records, then

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the Trial Court shall set aside the Advocate Commissioner's report submitted and re-issue warrant to the same Advocate Commissioner to inspect the suit property and submit a report on the basis of the original FMB sketch for old S.No.468/1A1.

(iii)The Surveyor shall not plead helplessness. As undertaken by Mr.R.Siddharth, he shall produce the parent records and not the revenue records standing as on today for the suit property.

(iv)Thereafter, the property shall be remeasured and fresh report shall be submitted.

(v)The plea of Mr.Srinivasan that he should be permitted to represent I.A.Sr.No.1590 of 2023 is acceeded to. Prior to re-presenting the petition for amendment, the plaintiff shall delete the revenue authorities in the amendment application.

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(vi)The amendment application seeks for the relief of declaration shall be considered on the merits of the case.

15. With the above observation, the petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

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To

The Additional District Munsif,
Tiruvallur.

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V.LAKSHMINARAYANAN, J.

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