



C.R.P.(MD)No.98 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 13/02/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

C.R.P (MD) No. 98 of 2024

and

CMP (MD) No. 469 of 2024

Muthupandi : Petitioner/Petitioner/
Plaintiff

Vs.

1.V.Elangovan
2.Kirubakaran Arasu : Respondents/
Respondents/
Defendants

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 25/08/2023 made in IA No.1 of 2023 in O.S No.69 of 2022 on the file of the Subordinate Judge, Mudukulathur.

For Petitioner : Mr.G.Sridharan

For Respondents : Mr.I.Suthakaran

O R D E R

This civil revision petition has been filed seeking to set aside the fair and decreetal order, dated 25/08/2023 made in IA No.1 of 2023 in O.S No.69 of 2022 on the file of the Subordinate Judge, Mudukulathur.



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2. The facts in brief:-

A suit in OS No.69 of 2022 was filed by this petitioner against the respondents seeking the relief of declaration that he become the absolute owner of the property by adverse possession; and for declaration that the document, dated 20/06/2022 as null and void; and for consequential injunction and other reliefs.

(ii) Pending the suit process, he took out a petition in IA No.1 of 2023 seeking for appoint of Commissioner with the following averments:-

He purchased several properties comprised in several survey numbers as mentioned in the petition from several persons. From the date of purchase, he started cultivating the crops. He is also planting Teak Wood, Guava, Sandal Wood trees and other trees. He is also making fencing in the suit property along with other properties. Suit S.No.296/2011 comprised to an extent of Acre 0.30 Cents and S.No.296/7 to an extent of Acre 0.16 Cents lies within the boundaries. So he trespassed into the properties and ever-since, he is in cultivation and possession from the year 2007.



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(iii)Originally, the suit property belongs to one Meenambal. She died, on 23/02/1996. In that property, he is cultivating 8 teak wood, 30 Guavu and other trees as mentioned in the petition. Similarly in other survey numbers namely S.Nos.296/11 and 296/7, 55 coconut trees were also standing. Later only, he came to know about the execution of sale deeds. But in those sale deeds, it has been mentioned as only vacant land.

3.To note down the physical features, availability of trees and to ascertain the age of the standing trees with the help of the Agricultural Department officials, he move an application for appointment of Commissioner.

4.That was resisted by the respondents stating that a forged claim is made by the petitioner that he prescribed title by averse possession. To find out the possession, Commissioner cannot be appointed.

5.After hearing both sides, the trial Court dismissed the petition observing that the possession of the parties cannot be ascertained by the Commissioner; Whether the trees are available or not is not the main matter for decision; Since the petitioner wants to declare that he prescribed title by adverse possession,



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that must be proved through oral and documentary evidence; to gather evidence, no Commissioner can be appointed.

6. Aggrieved over the dismissal order, this civil revision petition is preferred by the petitioner.

7. Heard both sides.

8. The learned counsel appearing for the petitioner would draw the attention of this court to the judgment of the Hon'ble Supreme Court reported in ***Government of Kerala and another Vs. Joseph and others [(2023(5) CTC 664]*** for the purpose of argument that when a similar situation arose, it was observed by the Hon'ble Supreme Court that the age of the trees must be ascertained by appointment of Commissioner with the help of the expert. He would also rely upon para 29, which is extracted herein:-

"28. In first appeal, the Court noted that no independent commission, or verification had been carried out of the age of the trees on the basis of which possession was being calculated. In view of this uncontroverted position, whether the standard of proof as held by this Court in Harphool Singh (supra) is no uncertain



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terms -

"When the property was a vacant land before the alleged construction was put up, to show open and hostile possession which could alone in law constitute adverse to the State, in this case, some concrete details of the nature of occupation with proper proof thereof would be absolutely necessary and mere vague assertions cannot by themselves be a substitute for such concrete proof required of open and hostile possession." (Emphasis supplied)

Cannot be termed as met. An estimation of age of the trees cannot be, by any stretch, termed as sufficient proof required to disturb the title that undisputedly rests with the Government as also testified by PW-1 and PW-2. Proper and concrete proof as required would need for the claimants to show some proof of possession, other than statements which may be vague.

It is also clear from the above discussion that merely a long period of possession, does not translate into the right of adverse possession. Surmises, conjectures and approximations cannot serve the basis for taking away the right over land resting with the State and place the said bundle of rights in the hands of one who did not have any such rights."



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9. So, this court is not going into the aspect as to whether the claim of the petitioner in the suit is maintainable or not. But unless the Commissioner is appointed, whether the trees are available in the property or not, cannot be brought on record. Similarly, the age of the trees may also be brought on record by ascertaining the same through an expert. Those particulars will help the Court to record a finding of fact. Unless those things are not brought on record, the main issue cannot be effectively adjudicated. Exactly on that aspect, the Hon'ble Supreme Court has made the above said observation.

10. Now the petitioner wants to exercise the above said option. I find no absolutely no bar that too legal to maintain the petition. Even though, the learned counsel appearing for the respondents would submit that it will amount to collection of evidence, I find that this is not a valid objection. Collection of evidence is entirely different from bring on record the physical features. So I am of the considered view that no prejudice will cause to the respondents herein in appointment of Commissioner.



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11.In the light of the above said observation of the Hon'ble Supreme Court, I am of the considered view that the revision is liable to be allowed.

12.In the result, this civil revision petition is **allowed**. The order, dated 25/08/2023 passed in IA No.1 of 2023 in OS No.69 of 2022 by the Sub Judge, Mudukuathur is set aside. There shall be a direction to the trial court to appoint a Commissioner to visit the suit property and take out the measurement of the standing trees' physical feature. The trial court is also directed to appoint an expert, who is capable of ascertaining the age of the trees, preferably from the Department of Horticulture or Forest, as the case may be. The trial court may fix the fee for the expert and the Commissioner. The trial court may also direct the Commissioner and expert to file report within a period of three months and proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

13/02/2024

Index:Yes/No
Internet:Yes/No
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To,

The Subordinate Judge,
Mudhukulathur,
Ramanathapuram District.



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G.ILANGOVAN, J

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