



C.R.P. (PD)(MD).No.744 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(PD)(MD)No.744 of 2019

and

C.M.P(MD) No.4421 of 2019

1. M.Rajendran (died)

2. M.Thavamani

... Petitioners/Respondents 1 &2
/Plaintiffs

3. R.Valliyammal

4. R.Prema

5. R.Tamil Mani

6. R.Elangovan

7. S.Vasuki

... Proposed Petitioners

(Petitioners 3 to 7 are brought on record as Legal Heirs of the deceased first petitioner vide order of this Court dated 14.12.2022 made in C.M.P(MD) No.11720 of 2022 in C.R.P(MD) No. 744 of 2019).

-vs-

1. R.Radha

2. R.Akilan

3. T.Balakrishnan

... Respondents 1 to 3/Petitioners/
Defendants 10, 11 and 15

4. Mookammal

5. R.Shanmugavel



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6. R.Thangapandi
7. R.Subramanian
8. R.Saravanan
9. R.Manickam
10. R.Ramar
11. M.Thirukkanna Thevar
12. M.Kandasamy Thevar
13. R.Arunan
14. M.Veerakumar
15. S.Vilvalingam
16. Muthulakshmi

17. Shanmugam (died)

18. Anbalagan
19. Panchavarnam
20. Shanthi
21. Ramalakshmi

22. The Tahsildar,
Kadaladi Taluk,
Kadaladi,
Ramanathapuram District.

23. The Zonal Deputy Tahsildar,
Kadaladi Taluk,
Kadaladi,
Ramanathapuram District.

24. The Sub Registrar,
Sayalgudi Sub-Registrar Office,
Sayalgudi, Kadaladi Taluk,
Ramanathapuram District.

25. Thikkuijayan
26. Packiaraj

... Respondents 4 to 24/
Respondents 3 to 23/
Defendants 1 to 9,
12 to 14 and 16 to 24



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27. Veeramani

... Respondents 25 to 27

(Respondents 25 to 27 are brought on record as Legal heirs of the deceased 17th respondent vide order of this Court dated 16.04.2024 made in C.M.P(MD) Nos.2020 to 2022 of 2024 in C.R.P (MD) No.744 of 2019)

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order in I.A.No.108 of 2018 in O.S.No.48 of 2011, dated 06.02.2019 passed by the Additional District Court, Paramakudi.

For Petitioners : Mr.P.Thiagarajan

For Respondents : Mr.PT.S.Narendravasan
for R1 to R3, R-14, R-15 & R-21

: Mr.K.Kumaravel
for R4 to R8

: Mr.T.Villavankothai
Additional Government Pleader
for R-22 to R-24

: No appearance – R-9, R-10, R-11,
R-13, R-16, R-18 to R-20 and R-25 to
R-27

: died – R-12 and R-17



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ORDER

The present Civil Revision Petition has been filed by the plaintiffs in O.S.No.48 of 2011 on the file of the Additional District Court, Ramanathapuram, challenging the order of appointment of Advocate Commissioner.

2. The above said suit has been filed by the plaintiffs for the relief of declaration of title and permanent injunction and declaration of certain sale deeds as null and void. The suit has been filed with regard to the Survey No. 340/3A1. It is the case of the plaintiffs that the predecessors in interest had vast extent of property in S.Nos. 340/3 and 349/3. According to the plaintiffs, their ancestors in title have sold 90 cents of lands to the ancestors in title of the defendants on 03.04.1964 only in S.No.349/3. However, the survey number is erroneously mentioned as 340/3 in the said sale deed. Based upon the mistake in the sale deed, the defendants are claiming title over Survey No. 340/3.

3. The defendants in their counter have stoutly disputed the said



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position and they have contended that they are in enjoyment of the property as per the survey number in the sale deed i.e., S.No. 340/3. When the suit was posted for cross examination of P.W.1, the defendants have filed I.A.No.108 of 2018 for appointment of an Advocate Commissioner to note down the physical features of the property and to file a report and plan. The said application was resisted by the plaintiffs on this ground that they had already filed O.S.No.56 of 2004 with regard to Survey No.340/3 as against some of the defendants in this suit. In the said suit, an Advocate Commissioner was appointed and he had filed a report and plan. The said report and plan have also been marked in the present suit. In such circumstances, the appointment of another Advocate Commissioner in the present suit may not arise.

4. The trial Court, after considering the submissions on either side, had proceeded to allow the application. Challenging the same, the present Civil Revision Petition has been filed by the plaintiffs.

5. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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6. The facts narrated above would clearly indicate that there is a dispute between the plaintiffs and the defendants with regard to the survey number of the property, in which, 90 cents were sold by the plaintiffs ancestors under a sale deed dated 03.04.1964. According to the plaintiffs, the said 90 cents fall within Survey No.349/3, but, erroneously mentioned as 340/3 in the sale deed. But the defendants contended that there is no mistake in the said sale deed and what was conveyed is 90 cents found in the Survey No.340/3.

7. In a suit for declaration of title and permanent injunction, the entire burden is upon the plaintiffs to establish their title and possession over the suit survey number. When they are opposing the appointment of an Advocate Commissioner, they take the risk. Therefore, the defendants need not take upon themselves the burden of proving that the plaintiffs are not in a possession of Survey No.340/3. That apart, it is settled position of law that, an Advocate Commissioner's Report marked in another suit without examining the said Advocate Commissioner. Therefore, the trial Court was not right in appointing an Advocate Commissioner to note down the physical features along with Surveyor at the instance of the defendants.



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8. In the result, this Civil Revision Petition stands allowed on the basis of the above said observations. The defendants are at liberty to question the admissibility and validity of the said Commissioner's Report (if filed in the present suit), which arises out of another suit, which was later withdrawn by the plaintiffs. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

14.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Additional District Court,
Paramakudi,
Ramanathapuram District.
2. The Tahsildar,
Kadaladi Taluk, Kadaladi,
Ramanathapuram District.
3. The Zonal Deputy Tahsildar,
Kadaladi Taluk, Kadaladi,
Ramanathapuram District.
4. The Sub Registrar,



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Sayalgudi Sub-Registrar Office,
Sayalgudi, Kadaladi Taluk,
Ramanathapuram District.

R.VIJAYAKUMAR,J.

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