



C.R.P.(MD)No.1164 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/03/2024

CORAM

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

C.R.P (MD) No.1164 of 2023

and

CMP (MD) No.5617 of 2023

1.Chockalingam (Died)
2.Muthu
3.Tmt.Pushpam
4.Anbazhagan

: Petitioners/Petitioners

Vs.

1.Thangavel (Died)
2.Kaveri
3.Ananth
4.Meera

: Respondents/Respondents

PRAYER:-Civil Revision Petition has been filed under Article 227 of the Constitution of India, to call for the records of the fair and decreetal order dated 23/02/2023 in IA No.3 of 2023 in AS No.36 of 2021 on the file of the Subordinate Judge, Keeranur, Pudukkottai District.

For Petitioners : Mr.K.Baalasundharam
Senior Counsel
for Mr.R.Paranjothi

For 1st Respondent : Died

For R2 to R4 : Mr.M.S.Suresh Kumar
for Mr.K.Ramaiah



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O R D E R

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This civil revision petition has been filed seeking in order to set aside the fair and decreetal order, dated 23/02/2023 in IA No.3 of 2023 in AS No.36 of 2021 on the file of the Sub Judge, Keeranur, Pudukkottai District.

2.The facts in brief:-

The suit in OS No.117 of 2012 was filed by the 2nd petitioner herein along with the deceased Chockalingam seeking the relief of declaration, for permanent injunction and for costs. That suit was dismissed, after full contest, by judgment, dated 25/06/2019. Against which, appeal was preferred by the petitioners before the appellate court in AS No.36 of 2021. Pending further process, a petition was taken out by the petitioners in IA No.3 of 2021 seeking appointment of Commissioner by invoking Order 26 Rule 9 CPC and sections 75 and 151 CPC. That was dismissed by the Appellate Court.

3.Against which, this civil revision petition is preferred.

4.To address the point raised in this petition, it is necessary to go back to the judgment of the trial court.



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5.The disputed property is comprised in Survey No.359/3A, situated in Mandaiyur Village, measuring about 25 cents. On the southern side of the property mentioned above, the defendants are having properties. When the defendants approached the plaintiffs to sell the property to them, it was refused. Because of that, they are making trouble to his possession.

6.That was resisted by the respondents namely the defendants stating that the property purchased by the plaintiffs' father, dated 06/04/1962 is not related to the present property. Right from the grand-father, they are in possession. By mistake, the plaintiffs father obtained joint patta in respect of survey No.359/3. So, the defendants appealed against the joint patta, Revenue Divisional Officer visited the property, on 16/03/1990. After coming to know about the fact on ground, patta was restored in patta No.1299. Later, it was also transferred in their name. They constructed a titled house and terraced house, tin sheet and cattle shed, etc.

7.The trial court recorded a finding that the original survey No.359/3 is subdivided into survey No.359/3A measuring about 10 Acres. Patta granted in favour of the plaintiffs father was later cancelled by



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virtue of the order, dated 24/04/1990. It was also marked as Ex.B1. It was established by the defendants that in the property situated in Survey No.359/3A, they have constructed a tiled house and terraced house By recording the finding, that suit was dismissed.

6.Against that observation, appeal has been preferred. Now the petitioners wants to establish the fact that the defendants houses are not situated in the suit property. To ascertain the location of the houses of the defendants, now they want to take out a Commission petition.

7.The learned Senior counsel appearing for the petitioners would submit that since the issue is in relation to the location of the houses of the defendants, unless the Commissioner is appointed, no binding adjudication can be made. If the Commissioner is appointed and the location of the houses of the defendants are brought on record, then it will be helpful to the appellate court to record a correct finding.

8.Per contra, the contention of the respondents is that already there is a clear finding by the trial court that the defendants are in possession of the properties



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and put up a construction also. It is a record of finding. Against that finding, only the appeal will lie. To set aside the above said finding, the Commissioner cannot be taken out. He would also rely upon the following judgments viz., **i)The Principal, St.Patrick School and College, Crescent Road, Gandhi Nagar, Adayar, Chennai-20. Vs. Amaravathi (deceased) and 7 others (2010(1)MWN (Civil) 165; (ii)Packiam @ Subramania Chettiar (Died) and three others Vs. Chellaiah, rep. By his Power Agent, Paulsamy @ Madasamy Thevar (2023(3)MWN (Civil) 366) and** would submit that Order 41 Rule 27 CPC application will not lie in the name of appointment of Commissioner during the appellate stage.

9.No doubt that the appointment of Commissioner at the appellate stage will amount to an application under Order 41 Rule 27 CPC to take additional evidence. But the fact remains that already records have been produced before the trial court with reference to the patta proceedings. During the patta appeal proceedings, RDO visited the properties to ascertain the availability of the houses, cattle shed, etc. Only after assessing the ground situation, patta was re-transferred in the name of the defendants. Against which, revision was also preferred by the petitioners before the DRO. DRO also



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dismissed the revision. So when there is a clear finding by the RDO to the location of the property, now it may not be proper on the part of the petitioners to contend that the houses of the defendants are located elsewhere and not in the disputed property. More-over, it is duty of the plaintiffs to prove the title and possession of the property. They cannot take out a Commission Petition to disprove the case of the defendants.

10.On that ground also, I am of the considered view that the petition filed by the petitioners is not maintainable. It has been rightly rejected by the appellate court, which requires no interference.

11.In the result, this civil revision petition stands **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

26/03/2024

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

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1.The Subordinate Judge,
Keeranur,
Pudukottai District.

2.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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