



C.R.P(MD)No.1541 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2024
DELIVERED ON : 11.12.2024

CORAM:

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P(MD)No.1541 of 2022
and
C.M.P(MD)No.6637 of 2022

P.R.Vijayarahavan

... Petitioner

Vs.

S.R.Kalyana Venkatrama Raja

... Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow this Civil Revision Petition by setting aside the fair and decreetal order made in I.A.No.3 of 2019 in O.S.No.222 of 2019, dated 16.06.2022 on the file of the Additional Sub Court, Srivilliputhur.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondent : Mr.R.Suriyanarayanan



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ORDER

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This Civil Revision Petition is preferred against the order passed in I.A.No.3 of 2019 in O.S.No.222 of 2019, dated 16.06.2022 on the file of the Additional Sub Court, Srivilliputhur.

2. The revision petitioner is the third defendant in the above suit. The respondent as plaintiff filed the above suit in O.S.No.222 of 2019 for permanent injunction.

3. According to the plaintiff, the suit property belonged to the plaintiff's paternal grand-father, namely, Sanjeevi Raja. He had four sons and a daughter. The family properties of Sanjeevi Raja were partitioned vide registered partition deed, dated 02.02.1946 among his sons and himself. In the said partition deed, the suit property was allotted to the share of plaintiff's father, namely, Rajalinga Raja. Thereafter, in the family partition of the plaintiff, vide registered partition deed, dated 28.02.1970, the plaintiff was allotted the suit schedule property. After the said partition deed, the plaintiff became the absolute owner of the entire suit schedule property. The plaintiff's father Rajalinga Raja has constructed a residential house in the



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suit property in the year 1962. The plaintiff's father died in the year 2002 and his aunt Rengammal died in the year 2003. The first defendant is claiming right and title to the western 16 cent in the suit property by virtue of a gift deed, dated 28.02.1973, said to be executed by the plaintiff's grandfather Sanjeevi Raja in favour of the first defendant's mother Rengammal and the same is strongly denied. As the plaintiff is in continuous possession and enjoyment of the suit schedule property after the partition deed, dated 28.02.1970 and his possession is being disturbed by the defendants, he filed the present suit for the relief of permanent injunction.

4. The defendants filed a written statement, contending that it is true that the suit schedule property was originally allotted to the share of the plaintiff's father Rajalinga Raja vide registered partition deed, dated 02.02.1946. Subsequently, a registered exchange deed, dated 14.03.1956 was executed between the plaintiff's father and his grand-father, wherein out of 39 cents, 5 cents were excluded for the purpose of a common well and out of the remaining 34 cents, 2 cents were allotted a pathway. Therefore, in the remaining 32 cent, the western portion measuring 16 cent with undivided half right in well and the eastern 16 cent is with the plaintiff's



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father. In view of the exchange, the plaintiff's father Rajalinga Raja was given some other properties of Sanjeevi Raja as described in the second schedule in the exchange deed. The second defendant is the wife of the third defendant. The first defendant is the mother of the second defendant. After the exchange deed, Sanjeevi Raja had executed a registered settlement deed in favour of his daughter Rengammal vide the registered settlement deed, dated 28.02.1973. Thereafter, she has executed a registered settlement deed in favour of her daughter, the first defendant. After the said settlement deed T.S.No.36 was sub-divided as 36/1 to 4. As per the sub division, 16 cents on the west of the suit property was allotted to the first defendant in T.S.No. 36/1 and for the same, a separate patta was issued in the name of the first defendant. For T.S.No.36/3, patta was issued in the name of the plaintiff. The first defendant executed a registered settlement deed in favour of her daughter, the second defendant on 24.10.2018. After the said settlement deed, the patta for T.S.No.36/1 was transferred in the name of the second defendant and she is in possession and enjoyment over the 16 cent in which a building was constructed that bears D.No.100/1. The plaintiff has suppressed the exchange deed, dated 14.03.1956. The plaintiff is not in exclusive possession and enjoyment of 39 cents as alleged in the plaint.



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Therefore, the defendants prayed to dismiss the suit.

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5. Since there is a dispute with regard to identity and demarcation of suit property, the petitioner took out an application in I.A.No.3 of 2019 to appoint an Advocate Commissioner to inspect the suit schedule property and to note down the physical features and to measure and identify the area with the help of Town Surveyor. The respondent herein has filed counter to the above said I.A and resisted the same.

6. The Trial Court however dismissed the said application stating that an appointment of an Advocate Commissioner in a suit for bare injunction is not necessary. Aggrieved by this Court, the present revision is preferred.

7. According to the learned Counsel for the revision petitioner, by appointing an Advocate Commissioner, the identification of the property can be easily understood, since there is a dispute with regard to identification and demarcation of area. However, the Trial Court has erroneously dismissed the application which calls for consideration by this Court.



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8. The learned Counsel for the petitioner would submit that no prejudice would be caused to the other side by appointing an Advocate Commissioner to inspect and measure the suit property. On the other hand, the report of the Advocate Commissioner would further meet the ends of justice.

9. To support his contention, he relied the following judgments:

- i) Mr.S.Ramanathan Vs. Tmt.Malathi reported in 2013 (3) TLNJ 292 (Civil) and*
- ii) B.Amutha Vs. Anandhi Sankara Narayanan reported in 2016 (5) L.W 658.*

10. On the other hand, the learned Counsel for the respondent argued that it is a suit for bare injunction and that identification of possession through Advocate Commissioner is not permissible in the eye of law and therefore, the Trial Court has rightly dismissed the application which calls for no interference.



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11. Heard the learned Counsel for the petitioner and the respondent and perused the materials available on record.

12. Admittedly, it is a suit for bare injunction filed by the respondent / plaintiff claiming right over the suit property through a partition deed, dated 02.02.1946. But the plaintiff denied the execution of exchange deed which according to the defendants that the father of the plaintiff and his grandfather Sanjeevi Raja exchanged the property between themselves. There is no dispute with regard to identification and demarcating the area. Therefore, the Trial Court has rightly dismissed the application for appointment of Advocate Commissioner stating that if the title is proved, it would resolve the real dispute. Therefore, the order under revision do not suffer any fundamental irregularity or jurisdictional error warranting interference by this Court.



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13. Accordingly, this Civil Revision Petition stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

11.12.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Additional Sub Court,
Srivilliputhur.



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K.GOVINDARAJAN THILAKAVADI, J.

BTR

Order made in
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11.12.2024