



C.R.P.(MD)No.2135 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 13.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.2135 of 2022

and

C.M.P.(MD)No.9873, 9853 & 9000 of 2022

The Director of Survey and Settlement,
o/O.Commissionerate of Survey and Settlement,
Survey House,
Chepauk, Chennai-5.

... Petitioner / Nil / Nil

Vs.

1.S.P.Kalaiaarasi

... 1st Respondent / Petitioner /
Plaintiff

2.Saroja

3.R.Mani

4.Ramamoorthy (died)

5.The State rep. by
The District Collector,
O/o.District Collector,
Thanjavur District.

... Respondents / Respondents 2 to 7 /
Defendants 2 to 5

6.Parimala



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7.Kowsika

8.Dhayal

(respondents 6 to 8 are suo motu impleaded
as Lrs of the deceased 4th respondent as per the
order of this Court dated 09.08.2024 made
in C.R.P.(MD)No.2135 of 2022 by GRSJ)

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, against I.A.No.296 of 2022 in O.S.No.172 of 2010 fair and decreetal order dated 06.09.2022 pending on the file of the Principal Subordinate Judge, Tanjore.

For Petitioners : Mr.K.Balasubramani
Special Government Pleader

For Respondents : Mr.AN.Ramanathan
for R1

: Mr.A.Arun Prasad
for R6 to R8

: Mr.K.Balasubramani
Special Government Pleader for R5
R2 & R3- Tapal Returned

ORDER

Heard both sides.

2. O.S.No.229 of 2004 was filed before the Principal District Judge, Thanjavur by one Kalaiarasi for the relief of declaration and delivery of possession. The suit was transferred to the file of the Principal Sub Court,



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Thanjavur and re-numbered as O.S.No.172 of 2010. An advocate commissioner was appointed. He submitted his report. The report was scrapped at the instance of the contesting defendants. Questioning the same, the plaintiff filed C.R.P.(PD)(MD)No.1922 of 2009. The said CRP was disposed of on 19.12.2012 in the following terms:-

“6.Be that as it may, now then, one point is clear that it is not sufficient to measure as per the currently existing UDR Survey. A step further should be undertaken, so to say, it has to be found out as to what was the extent the vendor of the plaintiff was owning in that area and when that area was surveyed and separate sub-division Nos.231/3, 231/44 and 231/56 were given. On the one hand, the plaintiff's contention is that the plaintiff's property was carved out as S.No.231/3 and in that itself, it was subsequently and unauthorisedly Sub-Division Nos.231/44 and 231/56 were carved out illegally. This is the crucial point to be found out, because it is a suit for declaration and the Civil Court has got the powers to go into all aspects of it.

7.Wherefore, I mandate that the Lower Court shall appoint an Advocate, after getting consent from both the sides, as Commissioner and such Commissioner is hereby mandated to visit the suit property with the old survey records relating to Survey No.231 and also the other relevant records relating to the Sub-Division of S.Nos.231/3 and also Sub-Division of S.Nos.231/44 and 231/56 and measure the properties and areas concerned as the circumstances might warrant and submit his report with sketch with reference to the contrary involved in this case. The Advocate Commissioner shall be assisted by the Sub-Inspector of Survey of that area, as he alone could give proper assistance with his assistants, to the Advocate Commissioner and deal with the matter comprehensively.”



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Thereafter, the petitioner filed I.A.No.470 of 2019 for causing production of the certain documents. One of the documents which was sought by the plaintiffs was a old settlement register for Survey No.231. Since the official defendants could not produce this document, the Court below thereupon invoked its power under Order 16 Rule 10 of C.P.C and issued proclamation summoning the Commissioner of Land Survey for production of the aforesaid document. Challenging the order issued by the Court below, the present Civil Revision Petition has been filed.

3. I will not fault the court below. This is because, he has acted only in terms of the direction given by this Court in the earlier CRP. The revision petitioner cannot also be blamed. They have in unambiguous terms stated that the document sought for by the plaintiff is not available. The official cannot be fastened with liability for production of the document that is insisted upon by the Court below. No purpose will be served by summoning the revision petitioner. If the revision petitioner is withholding the document in his custody, there will be justification in invoking the power under Order 16 Rule 10 of C.P.C. When the stand of the revision petitioner is that the document itself is not available and there is nothing on record to show that he is not stating the truth, no purpose will be served by persisting with the impugned direction. The



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court below can always fall back on certain standard methods. If there is a paucity of material, the Court can fall back on presumption if it is convinced that the materials is being willfully withheld. It can draw adverse inference. The court below shall dispose of the suit on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

4. In this view of the matter, the impugned order is set aside. The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

13.08.2024

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

The Principal Subordinate Judge, Tanjore.



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G.R.SWAMINATHAN, J.

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