
(1999) 04 MAD CK 0095
In the Madras High Court
Case No : C.R.P. No. 2974 of 1995

Adammal and Others

APPELLANT

Vs

Poosari Vellaya Gounder and Others

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

Citation : AIR 1999 Mad 390 : (1999) 3 LW 647 : (1999) 3 MLJ 83

Hon'ble Judges : K. Karpagavinayagam, J

Bench : Single Bench

Advocate : R. Sekar, for Sarvabhauman Associates, for the Appellant; S.P. Subramanian, for the Respondent

Final Decision : Dismissed

Judgement

K. Karpagavinayagam, J.—Defendants are the petitioners. The first respondent plaintiff filed the suit for declaration of title and permanent injunction in O.S. No. 1314 of 1986 on the file of the District Munsif Court, Salem on 26-10-1986. The defendants filed the written statement on 5-1 -1987.

2. On the application filed by the plaintiffs, the respondents herein, an Advocate Commissioner was appointed by the Court to go to the spot and make an inspection and file a report. Accordingly, on 13-8-90, the Commissioner, after inspection of the suit property in the presence of the parties and counsel, filed a report along with two Plans, marked as A and B.

3. Objecting to the said report, petitioners/ defendants filed a petition on 28-8-90 requesting to remit the report to the same Commissioner for submitting an additional report on (a) girth of all the trees mentioned in his report; (b) age of all the trees mentioned in his report and (c) the area of S. No. 61/B in the possession of the plaintiff excluding the disputed portion shown in his plan B in red lines.

4. On the basis of this objection, the learned District Munsif, Salem directed the

Advocate Commissioner, by making a re-issue of warrant of Commission with reference to the Point Nos. 1 and 2. In pursuance of the said re-issue of warrant, learned Advocate Commissioner, again inspected the suit property on 16-8-92 after giving notice to both the parties. After preparing the report on the inspection made, in the presence of the counsel for the parties, the Commissioner submitted an Additional Report on 21-12-1992, giving the details regarding the girth and age of the trees.

5. Though the said report was filed on 21-12-1992 before the learned District Munsif Court, a copy of which was furnished to the petitioners/ defendants, they did not choose to file any objection to the said report at that stage.

6. In the meantime, the case was periodically adjourned and the issues had begun framed and finally, it was posted in the list for trial on 17-11-1994. At this stage, on 31-10-1994, the petitioners/defendants filed an application in I.A. No. 1449/94 requesting to appoint a Commissioner to measure the new Survey Nos. 6/1B, 6/15 and 6/18 excluding the red marked portions shown in Plan "A" of the Commissioner's first report.

7. It shall be noticed in this context that the very same prayer had been made by the petitioners in the earlier application filed on 28-8-90 objecting to the first report, seeking for fresh report on three grounds. However, the learned District Munsif did not agree for seeking report in respect of third point, but directed the Commissioner to submit a report with reference to first two points as indicated above.

8. The application filed in LA. No. 1449/94 on 31-10-1994 was contested by the plaintiff/ respondent by filing counter, stating that the defendants/petitioners are not in possession of any portion of Survey No. 6/1-B and the red-marked portion is not in the possession of the petitioners which is the disputed property and that even if the respondent is found to be in possession of the excess "area, the petitioners cannot claim any portion in the Survey No. 6/1-B.

9. It is also stated in the counter-affidavit that even in the first report of the Commissioner, all the necessary details have been given regarding the extent of the suit property and as such, the appointment of Commissioner for making further inspection and for further, report is quite unnecessary.

10. After hearing the counsel for the parties, the learned District Munsif has passed an order dated 20-9-95 holding that the petition is liable to be dismissed as there are no merits.

11. The counsel for the petitioners/defendants would strenuously contend, while attacking the impugned order, that the points involved in the suit are whether the boundaries will prevail over the measurement and what is the extent held by the plaintiff within four boundaries earmarked by the Commissioner and that when boundaries prevail over the measurement, it is necessary to find out what is the excessive measurement available within four boundaries marked in the

Commissioner's report and Plan and that therefore, the trial Court ought to have re-issued the warrant for making further inspection to take measurement of the boundaries mentioned in the petition in I. A. No. 1449 of 1994.

12. It is also strenuously contended by the counsel for the petitioners, on the strength of the decisions reported in AIR 1937 Patna 670 (Shib Charan v. Sarda Prasad), Nazir Singh and Others Vs. Lakhu Ahir and Others, , AIR 3926 Patna 462 (2) (Sone Kuar v. Baidyanath), that this Court has got powers, once the report earlier submitted was not satisfactory in certain respects, to remit to the same Commissioner or to appoint another Commissioner to make an inspection of the suit property and file another report.

13. There is no dispute in this proposition. As correctly pointed out in the judgments cited supra, the Court must feel that the earlier report is unsatisfactory. When the lower Court-feels, in the instant case, that the earlier report was satisfactory, the request, that was belatedly made, for there-issue of the warrant on 31-10-1994, even though the reports were filed on 13-8-1990 and 21-12-1992 respectively, cannot be said to be reasonable.

14. According to the impugned order, the dispute is with regard to the red marked portions alone and in such a situation, the petitioners cannot seek for fresh visit of the Commissioner to measure the sub-division of Survey No. 6/1-B excluding the red marked portions, as it would not serve any purpose.

15. In the light of the valid reasons contained in the impugned order for rejecting the request of the petitioners, I am not inclined to interfere with the same, as I do not find any valid ground to take a different view from that of the trial Court.

16. In the result, the Civil Revision Petition is dismissed. No costs.