

**Ramalingam Vs. Kanchan**

**Ramalingam Vs. Kanchan**

**SooperKanoon Citation :** [sooperkanoon.com/964657](http://sooperkanoon.com/964657)

**Court :** Chennai

**Decided On :** Mar-21-2013

**Judge :** M.Venugopal

**Appellant :** Ramalingam

**Respondent :** Kanchan

**Judgement :**

IN THE HIGH COURT OF JUDICATURE AT MADRAS Date:- 21.03.2013 Coram The Honourable Mr. Justice M. VENUGOPAL C.R.P. PD. No.968 of 2011 and M.P. No.1 of 2011 Ramalingam ... Petitioner ..Vs.. Kanchan ... Respondent Civil Revision Petition filed against the order dated 2.12.2010 passed in I.A. No.514 of 2009 in O.S. No.63 of 2008 on the file of the District Munsif Court, Udthagamandalam. For Petitioner : Mr. A.U. Ilango For Respondents : Mr. N. Damodaran ` O R D E R The Revision Petitioner/Defendant has filed the instant Civil Revision Petition as against the order dated 2.12.2010 in I.A. No.514 of 2009 in O.S. No.63 of 2008 passed by the learned District Munsif, Udthagamandalam.

2. The Learned District Munsif, while passing the orders in I.A. No.514 of 2009 in O.S. No.63 of 2008 on 2.12.2010 (filed by the Revision Petitioner/Defendant (as Petitioner), has among other things, observed that 'this Court is of the opinion that when this suit stands in a part heard stage, at this juncture, this application has only been filed in order to protract the proceedings as long as possible and this Court is also of the view that the present dispute can be established by the petitioner with oral and documentary evidences etc.' and consequently, dismissed

the application without costs.

3. The Learned counsel for the Revision Petitioner/Defendant submits that the Revision Petitioner/Defendant filed I.A. No.514 of 2009 in O.S. No.63 of 2008 on the file of the trial Court inter-alia making averment that the Respondent/Plaintiff has deliberately filed the suit by giving false cause of action and obtained an interim injunction of 30 cents of land described in the suit schedule and also that he is trying to encroach upon the Revision Petitioner/Defendant's land and trying to take over the remaining 20 cents of land. Also, it is pleaded in the affidavit in I.A. No.514 of 2009 in O.S. No.63 of 2008 that apart from the Respondent/Plaintiff's false claim of property in the suit survey number, the Revision Petitioner/Defendant is in possession of 20 cents of land and taking advantage of the interim injunction obtained by the Respondent/Plaintiff on false pretext, he is trying to trespass into 20 cents of land, which belongs to him. Therefore, the Petitioner/Defendant has sought for an order from the trial Court in regard to the appointment of Advocate Commissioner to inspect the suit schedule property and to file a report.

4. From the counter filed by the Respondent/Plaintiff in I.A. No.514 of 2009 in O.S. No.63 of 2008, it comes to be known that the Revision Petitioner/Defendant, as Plaintiff, has already filed a suit in O.S. No.161 of 1995 on the file of the trial Court praying for the relief of declaration of title in respect of the suit schedule property mentioned therein and the said suit, after full contest, came to be dismissed. As such, the application in I.A. No.514 of 2009 in O.S. No.63 of 2008 filed by the Revision Petitioner Petitioner/Defendant, as Petitioner, before the trial Court, praying for an appointment of Advocate Commissioner, is barred in law.

5. It is not in dispute that the Respondent/Plaintiff has filed O.S. No.63 of 2008 on the file of the learned District Munsif, Ootacamund, Nilgiris, praying for the relief of permanent injunction restraining the Defendant (Revision Petitioner), his family, men, servants, agents or any other persons acting through or under him in any manner interfering with the Respondent/Plaintiff's peaceful possession and enjoyment of the suit property. In the schedule of the property in O.S. No.63 of 2008, the total extent contiguously owned by the Respondent/Plaintiff in survey

No.600/1A and 198/3 under a common boundary is mentioned as 0.30 acre in Registration District of Nilgiris and Registration sub district of Kotagiri and Kaguchi I village (old survey No.600/1 and 198/3 and New Number for 600/1 is 600/1A) The break-up for 0.30 acre in the aforesaid survey numbers under common boundary is mentioned in the schedule of the plaint, which is extracted here under:- "Extent owned in survey number 600/1A :

0. 20 acre (of coffee plants) Extent owned in survey number 198/3 :

0. 10 acre (of coffee plants) Total extent contagiously owned under Survey numbers 600/1A and 198/3 under a common boundary:0.30 acre" 6. A running of the eyes over the contents of the written statement in O.S. No.63 of 2008 on the file of the trial Court will exemplify and highlight that a plea has been taken that the alleged finding in O.S. No.63 of 2008 is totally different from the issue involved in the present suit and that the Respondent/Plaintiff in the suit has not prayed to declare his right to 30 cents of land alleged to be owned by him which was the subject matter of the suit in O.S. No.161 of 1995. Furthermore, it is the stand of the Revision Petitioner/Defendant that it is only the Respondent/Plaintiff, who is trying to extend the injunction to 50 cents of land based on the interim order of injunction obtained for 30 cents of land. Besides this, it is also pleaded that the present suit has been engineered to camouflage the Respondent/Plaintiff's action of illegally taking over 20 cents of land in the Petitioner/Defendant's possession.

7. A careful consideration of respective contentions, this Court opines that ordinarily a party can move an interlocutory application praying for the appointment of Advocate Commissioner in respect of any matter in issue touching controversy of the subject matter of the suit, with a view to elucidate any matter in issue or to assist the concerned Court.

8. It cannot be again said that the report of the Advocate Commissioner is not per se an evidence, by and large the report of the Advocate Commissioner in a given case is to be considered by the court of law along with other valuable oral and documentary evidence and it is for the concerned Court/trial Court to appreciate the entire gamut of the matter in question and to seek the assistance of the Commissioner's report. Also, the trial Court is at his discretion to ignore the

Commissioner' s report also.

9. In the instant case on hand, admittedly, the Respondent/Plaintiff has filed O.S. No.63 of 2008 on the file of the trial Court seeking the relief of permanent injunction restraining the Revision Petitioner/Defendant, his family, men, servants etc. acting through him or under him in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property. There is no two different opinion on the fact that the suit is in part heard stage before the trial Court. The main suit is filed for the relief of permanent injunction. In a suit for permanent injunction filed by the Respondent/Plaintiff, it is needless for this Court to make a pertinent mention that it is for him to prove his case/possession in respect of the suit property on the date of filing of the suit. Ordinarily in a suit for permanent injunction, the issue of title cannot be gone into by the Court. However, either incidentally or auxiliary, it is open to the trial Court to go into the aspect of title, when it touches upon the rights of the parties in regard to the controversies before the concerned Court.

10. In a suit for permanent injunction, this Court is of the cocksure opinion that it is for the plaintiff to prove possession. The Respondent/Plaintiff has to stand or fall on its own legs in regard to the establishment of his rights/possession in the suit for permanent injunction filed by him. Now, in the present case, the Petitioner/Defendant has filed I.A. No.514 of 2009 praying for appointment of Advocate Commissioner to inspect the suit property and file a report, after taking the assistance of a qualified Surveyor with the F.M.B. records and to demarcate the 30 cents of suit schedule property and 20 cents of land possessed by him. .

11. At the risk of repetition, this Court pertinently points out that in a suit for permanent injunction, it is not open to any party to indulge either in fishing expeditious or in rowing enquiries. If the parties are in law entitled to prove possession or to substantiate their version of case, they are at liberty and entitled to do so and for that purpose filing of application for appointment of Advocate Commissioner is not necessary. To put it differently, under the guise of filing of an application for appointment of Advocate Commissioner, one cannot collect/ignore evidence. It is true that the parties are entitled to produce best evidence before the

Court of law and for this purpose/object, they are to make an endeavour in this regard, which does not ipso facto mean that the party may be permitted to move this Court of law by filing an application for appointment of Advocate Commissioner, which is nothing but a surplusage, supernumerary, redundant and futile one.

12. Looking at any point of view, this Court comes to an inevitable conclusion that the trial Court, while passing order of dismissal in I.A. No.514 of 2009 in O.S. No.63 of 2006, has not committed any error of jurisdiction or any material irregularity or patent illegality warranting interference at the hands of this Court in this revision. Consequently, the Civil Revision Petition sans merit.

13. In the result, the Civil Revision Petition is dismissed, leaving the parties to bear their own costs, resultantly, the order passed in I.A. No.514 of 2009 is confirmed by this Court for the reasons assigned in this revision. It is made clear that the dismissal of the Civil Revision Petition will not preclude the Petitioner/Defendant and the Respondent/Plaintiff to raise all factual and legal pleas before the trial Court in the main suit. In this regard, the trial Court is directed to provide adequate opportunities to the parties concerned, since the suit is in part heard stage and also this Court, taking note of the fact that the main suit itself is one for permanent injunction and nearly four years have elapsed from the date of filing of suit, in the interest of Justice, Fair play, Equity and good Conscience, directs the trial Court to dispose of the main suit in O.S. No.63 of 2008 within a period of three months from the date of receipt of a copy of this order and to report compliance to this Court without fail. The parties are directed to render their relentless co-operation and assistance in regard to the completion of main suit proceedings. Consequently, the connected M.P. is also dismissed. ssa. To The District Munsif Court, Ootacamund

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**