



C.R.P.PD. No.3307 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2024

Delivered on : 19.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

C.R.P (PD) No.3307 of 2024

and

C.M.P. No. 17696 of 2024

S. Logu

... Petitioner

Versus

Amaladoss

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, pleaded to set aside the fair and decreetal order in I.A.No.1 of 2024 in O.S.No.232 of 2014 on the file of the Additional District Munsif Court, Vellore as incompetent, illegal and without jurisdiction.

For Petitioner : Ms. V. Srimathi

For Respondent/ : Mr. T.M. Hariharan
Caveator

ORDER



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This Civil Revision Petition has been filed against the order passed in I.A.No.1 of 2024 in O.S.No.232 of 2014 on 01.07.2024 dismissing the application filed under Order XXVI Rule 9 and Section 151 of C.P.C., seeking to appoint a second Advocate Commissioner to make inspection of the petition mentioned properties to measure the same with the help of Town Surveyor and submit his report with plan and photos so as to enable the Court to come to a correct conclusion.

2. The revision petitioner is the defendant in the suit. The suit has been filed for the relief of declaration of title and other incidental reliefs. Pending suit, the respondent has filed an application for appointment of Advocate Commissioner in I.A. No. 824 of 2014 in O.S.No.232 of 2014 and the Advocate Commissioner had also inspected the properties and filed his report before the trial Court on 17.10.2019. The petitioner, contending that there were four shops in the suit property in the shape of a square whereas in the report filed by the Advocate Commissioner only three shops were shown that too in the shape of triangle and thereby, the Advocate Commissioner's Report was defective and not proper, had filed an



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application in I.A. No. 1 of 2024 in O.S. No. 232 of 2014 to appoint another Advocate Commissioner.

3.The respondent/plaintiff had filed the counter stating that the application for appointment of Advocate Commissioner was ordered in I.A.No.824 of 2014 pursuant to which, a report with plan had been filed as early as on 17.10.2019 and the present application seeking to appoint another Advocate Commissioner after completion of cross examination and at the stage of arguments after a long lapse of six years cannot be countenanced and therefore, prayed to dismiss the same.

4. The trial Court, finding that the suit was filed against the petitioner for the relief of declaration of title, delivery of possession and mandatory injunction and in the suit, already an Advocate Commissioner had been appointed and that he had filed his Report along with rough plan, which was exhibited through him as Ex.C1 and Ex.C2 and that he had been examined on the side of the plaintiff as P.W.2 and he was fully cross-examined by the petitioner and that the case was at the stage of arguments and that in such



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circumstances the appointment of another Advocate Commissioner would create confusion rather than helping the court to decide the issue, had dismissed the petition. Challenging the same, the present civil revision petition has been filed by the defendant in the suit.

5. Heard Mrs.V.Srimathi, learned counsel for the petitioner and Mr. T.M. Hariharan, learned counsel for the caveator and perused the materials available on record.

6. Learned counsel for the revision petitioner/defendant would submit that though there are four shops in square shape situated in the suit property, the Advocate Commissioner's Report discloses only three shops that too in a triangular shape. Further, the road portion on the sides and extension of construction was not measured and the measurement in respect of the other side where fourth shop was situated also not done. She further contended that the Advocate Commissioner, who was examined as P.W.2, was cross examined by the revision petitioner, he had admitted to the discrepancy in the report and thereby, it should not deprive the petitioner



from filing an application to appoint another Advocate Commissioner. When the trial Court has already decided to appoint an Advocate Commissioner, appointing another Advocate Commissioner or the very same Advocate Commissioner to record the correct physical features existing in the property cannot amount to *res judicata* and thereby, the learned counsel seeks to set aside the order passed in I.A.No.824 of 2014 in O.S.No.232 of 2014.

7.Per contra, Mr. T.M. Hariharan, learned counsel for the caveator would submit that the suit was filed in the year 2014 and the Advocate Commissioner was also appointed. The Commissioner had inspected the suit property on 04.08.2018 and 25.08.2018 and had filed the Report as early as on 17.10.2019 along with plan. In paragraph 4(b) of the Report, a categorical mention has been made about the four shops including a mechanic work shop functioning in the name of 'Sri Selva Vinayagar' and a mention has also been made about the three other shops. Further, it is categorically stated that as per FMB records, the defendant's property is in a triangular shape whereas the defendant had constructed the building in a square shape and that he had encroached upon the suit schedule property and constructed



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a work shop and let it on rent. The petitioner, after completion of cross-examination of the Advocate Commissioner, did not file any petition for scraping or rejecting the Report of the Advocate Commissioner whereas he has filed an application in I.A.No.315 of 2024 in O.S.No.232 of 2014 seeking examination of the Inspector of Surveyor and the other witnesses and the said application was dismissed by the trial Court. Aggrieved by the same, the petitioner had also filed C.R.P. (PD) No.2141 of 2024 on the file of this Court and based on the no objection given by the respondent to examine the Inspector of Surveyor and the Civil Revision Petition was disposed of by this Court vide order dated 30.05.2024 with a direction to dispose of the suit within a period of three months from the date of receipt of a copy of the order. Thereafter, the Town Surveyor was also examined with regard to Annexures (Revenue Documents) filed in the Commissioner's Report dated 17.10.2019. Even during such time the petitioner had not sought for appointment of advocate commissioner and after completion of recording of evidence, when the suit was posted for arguments, the instant petition has been filed to delay the process. He would further submit that the trial Court, finding that the application has been filed at the fag end to



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cause confusion and also finding that it would not help the court to decide the issue in question, had dismissed the application and thereby he would seek for dismissal of the civil revision petition.

8.The application in I.A.No.824 of 2014 in O.S.No.232 of 2014 has been filed by the respondent/plaintiff seeking to appoint an Advocate Commissioner. Pursuant to which, an Advocate Commissioner has been appointed and he had inspected the suit properties on 04.08.2018 and 25.08.2018 and filed his Report on 17.10.2019. It is the claim of the petitioner that the report is a defective one since it does not show all the four shops and the correct shape of the property and for the above reason, the petitioner-defendant has filed the instant application seeking to appoint another Advocate Commissioner.

9.It is to be mentioned that the Advocate Commissioner appointed by the trial court at the first instance had inspected the suit property in the presence of the petitioner. The report filed by the Advocate Commissioner was not objected to by the petitioner at the earliest point of time. Even the



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Advocate Commissioner was cross-examined by the petitioner and thereafter, a petition to examine the Inspector of Survey had been filed and rejected and thereafter on revision it has been allowed on consent. Even at that time no request had been made for appointment of Commissioner stating that there were defects. However, a perusal of the report of the Advocate Commissioner would show that he has mentioned the four shops constructed by the defendant in square shape and he had also categorically mentioned about the shape of construction and the alleged encroachment said to have been made by the defendant in the suit property. It is useful to refer paragraph 4(b) and (c) of the Advocate Commissioner's Report.

“4.(b)மேற்படி வழக்கு சொத்தை அரசு வருவாய்த்துறை ஆவணங்களின்படி நிலத்தில் அளக்கும்போது, அதன் அளவுகள் முறையே வடக்கு தெற்காக, கிழக்குபுறம் 5.0 மீட்டராகவும், மேற்குபுறம் 4.3 மீட்டராகவும் மற்றும் கிழக்கு மேற்காக இருபுறமும் 3.3 மீட்டராகவும், ஆக மொத்தம் 16 சதுர மீட்டர் (172 சதுரடி) வருவாய் ஆவணங்களின் படியே நிலத்திலும் அமைந்துள்ளது. ஆனால் வழக்கு சொத்தில் மேற்படி அளவு முழுதும் ஒரு R.C.C. கட்டிடம் கட்டப்பட்டு அதில் ஒரு மெக்கானிக் ஒர்க் ஷாப் “ஸ்ரீ செல்வ விநாயகர்” எனும் பெயரில் இயங்கி வருகின்றது. அது குறித்து அவரிடம் விசாரித்ததில் அந்த மெக்கானிக் ஒர்க்



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ஜாப் பிரதிவாதியால் வாடகைக்கு விடப்பட்டுள்ளது என தெரிய வந்தது. மேலும் வழக்கு சொத்தில் உள்ள மெக்கானிக் ஒர்க் ஜாப் கட்டிடத்துடன் சேர்த்து பிரதிவாதி தன் சொத்தான உட்பிரிவு சர்வே எண்.2031/1A6B-ல் மேலும் 3 ஒர்க் ஜாப் கடைகளை கட்டி மொத்த கடைகளையும் வாடகைக்கு விட்டுள்ளதாக தெரிவித்தார். மேலும் அரசு வருவாய்த் துறை FMB-ல் பிரதிவாதியின் சொத்தானது முக்கோண வடிவத்தில் உள்ளது. ஆனால் பிரதிவாதி நிலத்தில் மேற்படி கட்டிடங்களை சதுர வடிவத்தில் கட்டி இருந்தார்.

(c)மேலும் வழக்கு சொத்தானது முழுவதும் பிரதிவாதியால் ஆக்கிரமித்து கட்டிடம் கட்டப்பட்டு அதனை அவர் ஒரு மெக்கானிக் ஒர்க் ஜாப் “ஸ்ரீ செல்வ விநாயகர்”-க்கு வாடகைக்கு விட்டுள்ளார் என்பது தெரிய வந்தது. என் கள ஆய்வில் வழக்கு சொத்து முழுவதும் பிரதிவாதியின் கட்டுப்பாட்டிலும் சுவாதீனத்திலும் இருந்து வருகிறது. மேற்படி வழக்கு சொத்து சர்வேயர் வரைபடத்தில் நீல நிறத்திலும் என்னுடைய வரைபடத்தில் நீல நிறத்திலும் காண்பிக்கப்பட்டுள்ளது. பிரதிவாதியின் சொத்து என் வரைபடத்தில் சிவப்பு நிறத்தில் காண்பிக்கப்பட்டுள்ளது.”

10.As per the report apart from RCC construction put up and



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functioning as a Mechanic Workshop there are three more shops in the suit schedule property. Further it is also categorically mentioned that as per FMB sketch and revenue records, the property of the petitioner/defendant is in the shape of triangle whereas the defendant had constructed the shops in square shape. The Advocate Commissioner has also been cross examined at length. Subsequently, in respect of Annexure 5 and 6 of the Advocate Commissioner's Report viz., FMB sketch and Town Field Register, the Town Surveyor had also been examined by the defendant. As rightly pointed out by the trial Judge, the application for appointment of another Advocate Commissioner had been filed at the fag end of argument stage. The trial Court had also found that the application had been filed only to cause confusion and that it would not help the court to decide the issues in question. Furthermore, it has been pointed out that the present application has been filed much after cross-examination of the Advocate Commissioner. When the petitioner cross-examined the Advocate Commissioner, then it is no longer open to him to file the instant application to appoint another Advocate Commissioner, thereby, indirectly attempting to scrap or nullify the report which was already on record. In the opinion of this Court, the



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trial Court had rightly rejected the application for appointment of second Advocate Commissioner and I do not find any error or irregularity in the order passed by the trial Court. The civil revision petition is therefore dismissed. No costs. Consequently, connected civil miscellaneous petition is also dismissed.

19.08.2024

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Additional District Munsif Court,
Vellore.

2. The Section Officer,
VR Section, Madras High Court,
Chennai.



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A.D.JAGADISH CHANDIRA, J.

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