

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.3153 of 2016

and

C.M.P.No.15980 of 2016

1.G.Shankar

2.S.Muthukumar

3. S.Anusuya

...Petitioners

Vs.

R.Sathianandam

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the order, dated 08.02.2016, passed in I.A.No.322 of 2015, in O.S.No.466 of 2014, from the file of the Subordinate Judge, Arakkonam.

For Petitioners : Mr.K.V.Ananthakrishnan

For Respondent : Mr.T.P.Prabhakaran

ORDER

The respondent filed a Suit against the petitioners, claiming refund of money, on the ground that only 207 sq.mts. of property was actually given to him, notwithstanding the sale of an area of 270 sq. mts.

2. The Suit was resisted by the petitioners, by contending that 270 sq.mts. of property was given to the respondent.

3. Before the trial Court, the petitioners filed an Application in I.A.No.322 of 2015, for appointment of an Advocate Commissioner to measure the property, and report its physical features with the help of a Surveyor.

4. The Application was dismissed by the trial Court on the ground that there is no scope for appointing an Advocate Commissioner and the matter could be resolved through documents. The said Order is under challenge in this Civil Revision Petition.

5. The learned counsel for the petitioners contended that, even now, the respondent is in possession of 270 sq. mts. of land, and it was only to prove the factum of possession of the said extent, the petitioners wanted appointment of Advocate Commissioner.

6. The learned counsel for the respondent, while justifying the order passed by the learned trial Judge, submitted that, out of the total area of 270 sq.mts of land, 63 sq.mts was acquired by the National Highways

Department. Therefore, what is left is only 207 sq.mts. According to the learned counsel, there is no need for appointing Advocate Commissioner to measure the property in view of the documents available with the Highways Department to prove the extent acquired, by resorting to the provisions of the Acquisition Act.

7. The petitioners have sold 270 sq.mts. of land to the respondent, by way of a registered document. The respondent approached the trial Court with a grievance that only 207 sq.mts of land was handed over to him. It was only under the said circumstance, the petitioners filed the Application in I.A.No.322 of 2015, for appointment of an Advocate Commissioner to report about the actual extent available with the respondent.

8. It is true that, since a part of the land in question was acquired by the National Highways Department, documents would be available with the said Department. It was only to prove the actual extent available with the respondent, the Application was filed. This aspect was not considered by the learned trial Judge. I am, therefore, of the view that the impugned order is liable to be set aside.

9. In the result, the Order, dated 08.02.2016, is set aside. The application in I.A.No.322 of 2015 is allowed.

10. The parties are given liberty to call for records from the Highways Department to prove the extent of land acquired from the petitioners.

11. There will be a further direction to the learned trial Judge to dispose of the Suit as expeditiously as possible, and in any case, within a period of six months from the date of receipt of a copy of this order.

12. The Civil Revision Petition is allowed, with the above direction. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.11.2016

sd

Index : Yes/No

Internet ; Yes/No

To

The Subordinate Judge
Arakkonam.

K.K.Sasidharan,J.,

sd

C.R.P.(PD)No.3153 of 2016

21.11.2016

<http://www.judis.nic.in>