

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1392 of 2017
and C.M.P.No.6438 of 2017

Moganambigai
Represented by her power of attorney
P.Gnanaraj

.. Petitioner

Vs.

Sathiya
Respondent

..

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.04.2016 made in I.A.No.1918 of 2015 in O.S.No.111 of 2013 on the file of the Principal District Court, Puducherry.

For Petitioner : Mr.V.V.Sairam

ORDER

The Civil Revision Petition has been filed against the fair and

decreetal order dated 27.04.2016 made in I.A.No.1918 of 2015 in O.S.No.111 of 2013 on the file of the Principal District Court, Puducherry.

2.The petitioner is the defendant and respondent is the plaintiff in O.S.No.111 of 2013. The suit is one for specific performance of agreement of sale dated 06.12.2010 and other consequential reliefs.

3. According to the respondent, the petitioner agreed to sell the vacant plot mentioned in the schedule of property to the respondent as per agreement of sale dated 06.12.2010. The petitioner filed a written statement on 27.01.2014 and is contesting the suit. The petitioner denied the execution of agreement of sale dated 06.12.2010. The petitioner filed I.A.No.1918 of 2015 for appointment of an Advocate Commissioner to note down the physical features of the schedule mentioned property, to take photographs and also to direct the Advocate Commissioner to file a report.

4. According to the petitioner, the suit property is not a

vacant land. The petitioner has put up construction of asbestos sheet and is carrying on business in the name and style of 'Puma Boat Yard'. In this circumstance, the appointment of Advocate Commissioner is necessary to find out the extent of the superstructure put up by the petitioner and to decide the issue in the suit.

5. The respondent has filed counter affidavit denying the averments mentioned in the affidavit and submitted that the suit is for specific performance of agreement of sale dated 06.12.2010 for vacant land. Even if there are superstructures in the suit property, suitable orders can be passed in the final judgment. Thus, he prayed for dismissal of the application.

6. The learned Judge considering the averments made in the affidavit, counter affidavit, materials available on record and nature of the relief sought for in the suit, dismissed the application holding that the issue involved in the suit is whether the respondent has entered into agreement of sale with the petitioner and hence, application for appointment of Advocate Commissioner in a suit for specific performance is premature.

7. Against the fair and decreetal order dated 27.04.2016 made in I.A.No.1918 of 2015, the present civil revision petition is preferred by the petitioner/defendant.

8. Heard the learned counsel for the petitioner and perused the materials available on record.

9. The contention of the petitioner is that the suit property is not a vacant land. The petitioner has put up superstructure and is carrying on business in the name and style of 'Puma Boat Yard'. The respondent has entered into an agreement of sale and filed the suit for specific performance for vacant land. In these circumstances, appointment of Advocate Commissioner is necessary to find out whether the superstructure has been put up by the petitioner or not.

10. The contention of of the learned counsel for the petitioner is untenable. The suit is for specific performance and the issue to be decided in the suit as to whether the respondent is entitled to

enforce the agreement of sale and is entitled to specific performance of the agreement of sale as claimed by her in the suit. It is to be noted that whether the suit property is a vacant plot or there is superstructure in the suit property, is not a issue in the suit. It is well settled that the parties must prove their case by letting in evidence and Advocate Commissioner cannot be appointed to collect the evidence. The petitioner has denied the execution of Agreement of Sale dated 06.12.2010. In view of such denial, it is for the respondent to prove that petitioner has executed the said Agreement and that he is entitled to decree of specific performance.

11. The learned Judge has given cogent and valid reasons while dismissing the application. Therefore, there is no illegality or irregularity in the order of the learned Judge, dated 27.04.2016 warranting interference by this Court.

12. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

18.04.2017

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Index:Yes/No

V.M.VELUMANI,J.

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To

The Principal District Court, Puducherry.

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