

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2293 of 2012
& M.P.No.1 of 2012

Rajanayaki @ Suguna

.. Petitioner

Vs.

1.Rajeswary

2.Sundarambal

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 09.03.2012 made in E.A.No.584 of 2011 in E.A.No.290 of 2005 in E.P.No.27 of 2005 in O.S.No.102 of 2004 on the file of the Principal District Munsif Court, Pondicherry.

For Petitioner : Mr.C.A.Diwakar

For R1 : Mr.T.S.Baskaran

For R2 : No appearance

ORDER

The Civil Revision Petition is filed against the order dated 09.03.2012 made in E.A.No.584 of 2011 in E.A.No.290 of 2005 in E.P.No.27 of 2005 in O.S.No.102 of 2004 on the file of the Principal District Munsif Court, Pondicherry.

2. The petitioner is the applicant and respondents are the respondents in E.A.No.584 of 2011 in E.A.No.290 of 2005 in E.P.No.27 of 2005 in O.S.No.102 of 2004. The petitioner is third party and obstructor in E.P.No.27 of 2005. The petitioner filed E.A.No.290 of 2005 under Order XXI Rule 97 of C.P.C. to set aside the order of delivery passed by the Court, adjudicate upon and decide the objections raised by the petitioner in execution of decree and effecting delivery of the petition mentioned property and dismiss E.P.No.27 of 2005 as inexecutable.

3. According to the petitioner, first respondent/deed holder filed suit in O.S.No.102 of 2004 against wrong person i.e., second respondent, who is the mother of the petitioner herein. The second respondent is not owner of the property and decree obtained against the second respondent is not executable. Further, the description of the property in decree and execution petition are different and the first respondent is trying to execute the decree against the property of the petitioner, which was purchased by the petitioner in sale deed dated 04.09.1996 from one Sadadharan. The petitioner sold one kuzhi, out of two kuzhis purchased by her, to one Venkatarayalu, who had put up two storied building in one kuzhi

purchased by him. The petitioner purchased the property with hut and first respondent obtained decree for possession of vacant land.

4. First respondent filed counter and denied various allegations made by the petitioner.

5. Before the learned Judge, the petitioner was examined as P.W.1 and she was cross-examined and the application was posted for further evidence on behalf of the petitioner. At that stage, the petitioner filed the present E.A.No.584 of 2011 for appointment of an Advocate Commissioner to inspect the property and note down the physical features of the petition mentioned property as found in E.A.No.290 of 2005 with the assistance of a photographer to ascertain the boundaries of schedule mentioned property as found in E.A.No.290 of 2005 by making local investigations with the persons residing in the four boundaries of the said property and to find out whether the same tallies with the four boundaries in the decree obtained by the first respondent.

6. According to the petitioner, the property in her possession and property mentioned in the decree are different. In the

circumstances, appointment of Advocate Commissioner is necessary.

7. First respondent filed counter and opposed the said application on the ground that the application is belated one and the petitioner ought to have filed this application, when she filed E.A.No.290 of 2005. The present application is only to drag on the proceedings and prevent the first respondent from taking possession of the petition premises as per the decree obtained by her. The petitioner has admitted various facts in her cross-examination and only to get over the said admission, she has come out with the present application.

8. The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed E.A.No.584 of 2011.

9. Against the said order of dismissal dated 09.03.2012 made in E.A.No.584 of 2011, the present Civil Revision Petition is filed by the petitioner.

10. Heard the learned counsel for the petitioner as well as the first respondent and perused the materials available on record. Both

the counsel for petitioner and first respondent reiterated the contention of parties in the affidavit and counter affidavit and grounds of revision.

11. The learned counsel for the first respondent, in support of his contention, relied on the following decision of this Court reported in **2004(1) L.W. 400 (Sankaran and others v. Pandyvel and others);**

"4.It is settled law that adjudication mentioned under Order 21 Rule 97(2) of the Code of Civil Procedure need not necessarily involve a detailed enquiry or collection of evidence. On the other hand, in an application under Order 21 Rule 97 of the Code of Civil Procedure, the enquiry must be summary and the proceedings must be disposed of expeditiously bearing in mind its scope and the limited question to be decided. "

12. The petitioner has filed the present application in E.A.No.584 of 2011 for appointment of Advocate Commissioner to inspect the suit property and find out boundaries of property in possession of the petitioner to find out whether the said property is the same as mentioned in the decree obtained by the first

respondent. The learned Judge has not only considered the averments made in the affidavit, counter affidavit and also considered the documents and evidence let in by the petitioner.

13. A reading of the impugned order passed by the learned Judge shows that in fact, the learned Judge has considered merits of E.A.No.290 of 2005 and rejected the contention of the learned counsel for the petitioner in the said application, by dismissing E.A.No.584 of 2011. By this impugned order, the learned Judge has exceeded his power conferred on him. He failed to consider the limited question as to whether the petitioner is entitled to the relief of appointment of Advocate Commissioner or not. Both the petitioner and first respondent have purchased the property from one Sadadharan. While the petitioner has stated that she has purchased the property on 04.09.1996, first respondent purchased the property by sale deed dated 28.09.1993 earlier to the petitioner. Whether the property mentioned in the decree and property purchased by the petitioner and in possession of the petitioner are one and the same is the issue in E.A.No.290 of 2005. The learned Judge dismissed E.A.No.584 of 2011 on the ground that the Village Administrative Officer identified the property along with the Court

amin. The surveyor will be the competent person to identify the property with FMB sketch and the Village Administrative Officer can assist the surveyor to identify the property.

14. For the above reasons, the impugned order dated 09.03.2012 made in E.A.No.584 of 2011 is set aside and Civil Revision Petition is allowed. The learned Principal District Munsif, Pondicherry, is directed to appoint an Advocate Commissioner with a direction to him to inspect the suit property with assistance of surveyor along with the Village Administrative Officer and file his report with regard to the property in possession of the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

04.12.2017

Index : Yes/No

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To

The Principal District Munsif, Pondicherry.

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V.M.VELUMANI, J.

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