

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2019

CORAM :

THE HON'BLE MR. JUSTICE N. SATHISH KUMAR

C.R.P. (PD) No.2684 of 2017

and

C.M.P.No.12760 of 2017

T.K.Prakash

Represented through his father and

Registered Power Agent T.K.Karuppusamy

... Revision Petitioner

Vs.

1.G.Chinnaraj

2.P.Nataraj

3.S.Ganesh

4.C.Jayakumar

5.V.Balaji

6.P.P.Rangasamy

7.M.Ravi

8.M.Periyasamy

9.Kannammal

10.M.S.Rajeswari

... Respondents

(Since respondents 4,5,6, 7 & 10 have not
contested the application, notice to them
may be dispensed with)

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 13.04.2017 made in I.A.No.218 of 2017 in O.S.No.280 of 2016 on the file of the II Additional District and Sessions Court, Tiruppur.

For Petitioner : M/s.R.Shase

For Respondents

R1 to R3 : Mr.R.Krishna Prasad
for M/s.Sarvabhauman Associates

R4 to R10 : Given up

ORDER

This Civil Revision Petition has been filed against the order of the trial Court, appointing an Advocate Commissioner to measure the suit properties based on documents of both sides.

2.For the sake of convenience, the parties will be referred to in the same rank as arrayed before the trial Court.

3.The facts leading to filing of this revision are as follows.

4.The suit in O.S.No.280 of 2016 had been filed by the plaintiffs, who are the respondents 1 to 3 herein, for declaration of title and for recovery of possession. The plaintiffs had laid the suit on the basis of sale deed of the year 2016. It is the main contention of the plaintiffs that the defendants have trespassed into the 'A' schedule property and have forcibly encroached a portion of the plaintiffs' properties in the northern extremity east-west wise, on 05.10.2016.

5.It is the contention of the defendants that they have purchased the property in the year 2007 itself and they are in possession of the property and they have never encroached the property as alleged by the plaintiffs.

6.The plaintiffs have filed an application before the trial Court for appointment of Advocate Commissioner on the basis of subdivision proceedings and the defendants have filed a counter to the said application, categorically stating that the entire land situated in R.S.No.69/1, 69/2 and 69/3 have to be measured as per the title deeds and that the revenue records alone cannot be looked into.

7.The trial Court, taking note of the facts and after hearing the parties, has appointed an Advocate Commissioner to measure the properties on the basis of title deeds of both sides, as against which, the present revision has been filed.

8.Learned counsel appearing for the revision petitioner submitted that, Advocate Commissioner cannot be appointed to gather evidence for the plaintiffs. The appointment of Advocate Commissioner, in fact, amounts to gathering of evidence. She further contended that the defendants have purchased the properties long back and the plaintiffs have purchased the properties, subsequently. Hence, the alleged encroachment pleaded by the

plaintiffs is not correct. In support of his contention that the Advocate Commissioner cannot be appointed to gather evidence, he relied upon a judgment of this Court in the case of **A.Meganathan v. S.Ramalingam** reported in **2017-3-L.W.130**.

9.Learned counsel appearing for the respondents 1 to 3/plaintiffs would submit that, Advocate Commissioner has been appointed to measure the properties on the basis of title deeds of both the parties.

10.In fact, the defendants themselves have filed a counter stating that the properties have to be measured as per the title deeds. Hence, there are no merits in the present revision, filed against the order of appointment of Advocate Commissioner. As already stated, the suit itself is for declaration and recovery of possession. It is the specific allegation of the plaintiffs that the defendants have encroached a portion of their property on 05.10.2016, whereas, it is the contention of the defendants that, they are in possession since long back, as they have purchased the properties in the year 2007.

11.The trial Court had appointed an Advocate Commissioner to measure the properties on the basis of title deeds. Mere measurement of the properties on the basis of title deeds will not cause any prejudice to the defendants. It cannot be simply stated that the appointment of Advocate

Commissioner is intended only to gather evidence. Though, the judgment relied upon by the learned counsel for the revision petitioner deals with appointment of Advocate Commissioner by observing that the Advocate Commissioners cannot be appointed to gather evidence, it has to be seen that this general principle cannot be applied to all suits. Each case has to be seen on its own facts and circumstances. In this case, the Advocate Commissioner has been appointed to measure the properties based on title deeds of both parties. Therefore, it cannot be said that, such appointment will give an undue advantage to the plaintiffs. It is for the plaintiffs to establish the alleged encroachment independently in evidence. Similarly, it is for the defendants to show that they are in possession from the year 2007. The allegations of both the parties are a matter of evidence. The Advocate Commissioner has been appointed only to measure the entire extent of the properties on the basis of documents of both parties and therefore, the contention of the revision petitioner that the same will amount to gathering of evidence cannot be countenanced. Hence, I find no error or illegality in the order passed by the trial Court in I.A.No.218 of 2017 in O.S.No.280 of 2016.

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

26.03.2019

mkn

N. SATHISH KUMAR, J.

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Index : Yes / No
Internet : Yes / No
Speaking order / Nonspeaking order

To

The II Additional District and Sessions Judge,
Tiruppur.



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