



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

CORAM

THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

WEB COPY

CRP (MD) .No.121 of 2019 (PD)

and

C.M.P. (MD) .No.571 of 2019

Rani R.B.K.Rajeswari  
Hereditary Trustee,  
Ramanathapuram Samasthanam Chatram  
Through Power of Attorney  
Rajamannar; 70 yrs,  
S/o.Ramamoorthy  
Palace,  
Ramanathapuram Town  
Ramanathapuram-623 501

... Petitioner/Petitioner/Plaintiff

Vs.

1.M.Selvarani  
2.R.Vijayakumar

.. Respondents/Respondents/Defendants 2&3

**PRAYER:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 14.11.2018 passed in I.A.No.216 of 2017 in O.S.No.31 of 2017 by the District Munsif cum Judicial Magistrate, Rameswaram.

For Petitioner : Mr.D.Malaichamy  
For Respondents : Mr.S.Prabhu

### **O R D E R**

This Civil Revision Petition has been preferred against the order passed in I.A.No.216 of 2017 in O.S.No.31 of 2017.

2.The said I.A was filed by the petitioner for appointment of an Advocate Commissioner to note down the physical features, which are available in the suit property.

3.The respondents/defendants have filed their counter statements, in which, they have stated that there is an existing building, which also got damaged and hence, the tenants vacated the said property. In the suit property, there are two survey numbers like S.No.627/500/3 and 627/554 respectively. In Survey No.627/554, which was given for rent to a third party and



subsequently, the third party vacated the same. In Survey No.627/554 A, measuring to an extent of 436 Sq.ft., one Dhasaradhan was appointed as a Power Agent. Out of which, he sold 218 sq.ft., to the first respondent on 28.02.2014 and subsequently, out of 218 Sq.ft., the first respondent sold 110 ½ sq.ft., to the petitioner/plaintiff on 28.05.2015. Pursuant to which, the revenue records were changed and the remaining land in the survey number was sold to one Balakumar on 23.11.2015. Hence, there is a sale in the year 2014 and 2015. The other objections raised by the respondents/defendants is that the correct Door Number of the suit property is D.No.29/M and not 37/A1 and the petitioner came to know the fact of demolition of a portion of the property, was known to him only in the month of May, is false. In the legal notice, he mentioned the building that it is a 50 years old building. Hence, the purpose of appointment of an Advocate Commissioner is not required in the said case.

4.The learned counsel appearing for the petitioner has relied upon the judgment of this Court in the case of **B.AMUTHA V. ANANDHI SANKARA NARAYANAN** reported in **(2016) 8 MLJ 368**.

5.The trial Court, on hearing both sides, has observed that, as per the sale deed, dated 28.02.2014, which was executed in favour of the first respondent, wherein, there is an existence of 50 years old building, whereas, the petition mentioned property was shown as a vacant site and the sale deed, dated 28.05.2015 an existence of 50 years old building was shown in the said sale deed and hence, the petitioner herein sought for appointment of an Advocate Commissioner to note down the physical features in the suit property. Further, the purpose of filing the suit is only for seeking the relief of declaration with regard to the sale deeds. Hence, the appointment of an Advocate Commissioner to note down the physical features for assessing the age of the building or the change of door number in the said suit property will not help in any purpose and it is for the petitioner to prove his case regarding the genuineness of the said sale deed and that the requirement of the Commissioner does not arise in this case.

6.On the side of the petitioner, since the petitioner states in her cause of action that when she is in possession and enjoyment of the property, the defendants cause interference to her peaceful possession and enjoyment of the same and other cannot have any dispute, whether the existence of 50 years old building or no other building in the said suit property, it is for the plaintiff to prove before the trial Court and hence, the requirement of appointment of an Advocate Commissioner to inspect the suit property and note down the physical features does not arise. Hence, the order of the trial Court does not require any interference. If at all necessity arise, it is for the parties to



file such application, if the trial Court feels it necessary to arrive at a decision for appointment of an Advocate Commissioner is necessary.

7. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The District Munsif cum  
Judicial Magistrate,  
Rameswaram.

2. The Record Keeper, VR Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 copies)

+1 CC to M/s.S.PRABHU, Advocate ( SR-51179[F] dated 01/03/2019 )

+1 CC to M/s.D.MALAICHAMY, Advocate ( SR-51421[F] dated 04/03/2019 )

ns

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**and**  
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**01.03.2019**

KM/ (02.04.2019) 3P 6C