



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P (MD) .No.808 of 2019 (PD)

and

C.M.P. (MD) .No.4949 of 2019

S.Ramesh

... Petitioner/Petitioner/
Plaintiff

Vs.

1. R.Bino Devakumar

2. D.John Darwin Seelan

... Respondents /Respondents/
Defendants

PRAYER:- Civil Revision Petition has been filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.01.2019 passed in I.A.No.356 of 2017 in O.S.No.2 of 2017 by the Principal Subordinate Court, Nagercoil.

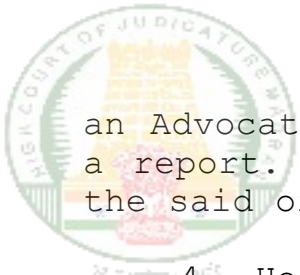
For petitioner : Mr.N.Dilip Kumar
For respondents : Mr.V.George Raja

ORDER

This civil revision petition has been filed by the petitioner/plaintiff challenging the order, dated 08.01.2019, passed in I.A.No.356 of 2017 in O.S.No.2 of 2017, whereby and whereunder the Court below dismissed the petition filed by the petitioner/plaintiff seeking to appoint an Advocate Commissioner to inspect the plaint schedule property and to file a detailed report.

2. It is seen that the petitioner/plaintiff filed the suit in O.S.No.2 of 2017 for declaration that the alleged power of attorney deed dated 19.11.2013 executed by the petitioner in favour of 1st respondent/1st defendant and the sale deed dated 22.11.2013 executed by the 1st respondent / 1st defendant in favour of the 2nd respondent/2nd defendant are null and void, and not binding upon the petitioner/plaintiff and also for a permanent injunction restraining the respondents/defendants from encumbering or alienating the plaint schedule property. At the same time, the 2nd respondent/2nd defendant had also filed O.S.No.132 of 2016 before the same Court seeking the reliefs of declaration of his title and recovery of possession from this petitioner.

3. According to the petitioner, in the sale deed dated 22.11.2013, the three storied house building is fraudulently shown as a shed in the description of the property and that the said building was constructed by him. In order to prove the same, the petitioner/plaintiff filed I.A.No.356 of 2017 seeking to appoint



an Advocate Commissioner to Inspect the suit property and to file a report. The Court below has dismissed the same. Challenging the said order, the petitioner/plaintiff is before this Court.

4. Heard the learned counsel appearing for both sides and perused the records carefully.

5. As stated earlier, the main grievance of the petitioner / plaintiff is that in the sale deed, dated 22.11.2013, the three storied house building is fraudulently shown and described as a shed in the description of the property and that the said building was constructed by him. Admittedly, the petitioner/plaintiff has been in possession of the suit property. The petitioner/plaintiff has also stated that the building existing in the suit property was constructed by him. The Court below has held that in such an event, the existence of building and its valuation can be ascertained by producing the building plan approval, completion report and municipal tax assessment order, etc., and therefore, for the same, appointment of Advocate Commissioner is not necessary. This Court does not find any reason to interfere with the said finding of the Tribunal.

6. Though the learned counsel for the petitioner/plaintiff relied upon the decisions reported in 2014 (5) CTC 85 (Anwar Batcha and another Vs. S.Mahuedoom); 2015 (3) CTC 689 (Thangammal Vs. K.Kumarasamy and another) and 2018 (4) L.W. 879 (Irulandi @ Palraj Vs. Ponnusamy and others), the above decisions are not applicable to the facts and circumstances of this Case and hence, they could not be considered.

7. At this juncture, the learned counsel for the petitioner/plaintiff submitted that only lesser amount has been mentioned as the value of the suit property and therefore, the sale deed alleged to have been executed by the first defendant is not a valid one and in order to prove the same, the appointment of Advocate Commissioner is necessary. This Court is of the view that the factum of mentioning of lesser value in the sale deed can be proved through oral and documentary evidence, for which also the appointment of Advocate Commissioner is not necessary.

8. In view of the above, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //



To

1. The Principal Subordinate Judge,
Nagercoil.

2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.RM.Shivakumar, ADVOCATE IN SR No.70456

+ 1 CC TO Mr.N.Dilipkumar, ADVOCATE IN SR No.70472

C.R.P (MD) .No.808 of 2019 (PD)

21.06.2019

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