



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (PD) (MD) .No.189 of 2018

and

C.M.P. (MD) .No.827 of 2018

WEB COPY

1.Shanthi
2.Gayathiri

... Petitioners/Respondents 3&5/
Defendants 3&5

Vs.

1.K.Seenivasan
2.Seethalakshmi @ Devi
3.Jothikarani
4.Kavitha

...Respondent1/Petitioner/Plaintiff

... Respondents 2 to 4/Respondents Nos.1,2&4/
Defendants 1,2&4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 30.11.2017 made in I.A.No.285 of 2017 in O.S.No.103 of 2014 on the file of the Principal District Munsif, Dindigul.

For Petitioners : Mr.G.Gomathi Sankar
For R1 : Mr.M.P.Senthil

O R D E R

The Civil Revision Petition has been filed challenging the order passed by the learned Principal District Munsif, Dindigul in I.A.No.285 of 2017 in O.S.No.103 of 2014, dated 30.11.2017.

2. The revision petitioners herein are the defendants 3 and 5 and the first respondent is the plaintiff in O.S.No.103 of 2014. The first respondent/plaintiff has filed an application in I.A.No.285 of 2017 before the learned Principal District Judge, Dindigul for appointment of an Advocate Commissioner to measure the suit property with the help of the qualified surveyor. The Court below after hearing both the parties, allowed the application and appointed the Advocate Commissioner to measure the suit property and file a report. Challenging the said order, the present civil revision petition has been filed by the petitioners/defendants 3 and 5.

3. According to the revision petitioners, originally they entered into a sale agreement with the first respondent/plaintiff to sell the property to an extent of 20900 sq.ft. Further, if anything beyond 20900 sq.ft., the first respondent/plaintiff shall pay a sum of Rs.500/- for every sq.ft. While making the



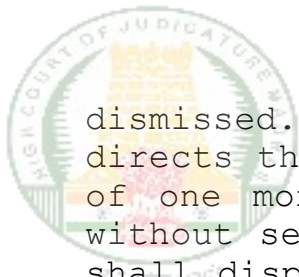
submission, the learned counsel appearing for the revision petitioners contended that the measurement of the property can be carried out, at the time of execution of the sale deed, in case, if the Court below allowed the suit for specific performance filed by the first respondent/plaintiff herein. He further contended that at this juncture, it is not necessary to appoint the Advocate Commissioner. Hence, he prayed for setting aside the order passed by the Court below.

4. Per contra, the learned counsel appearing for the first respondent/plaintiff contended that a sale agreement entered between the revision petitioners and the first respondent herein for sale of property about 20900 sq.ft., and though the first respondent/plaintiff is ready to make the payment, the revision petitioners have not come forward to execute the sale deed. Hence, the first respondent/plaintiff has filed the present suit for specific performance to execute the sale deed for 20900 sq.ft., and to determine the amount for the excess land beyond 20900 sq.ft., as stated in the sale agreement. The main contention of the first respondent/plaintiff is that the present suit has been filed for specific performance and it is the duty of the Court below to find out the excess land and to determine the sale price for the said excess land. Therefore, he contended that the Court below has rightly applied its mind and appointed the Advocate Commissioner to measure the suit property with the aid of the surveyor.

5. Heard the learned counsel appearing for the revision petitioners as well as the learned counsel appearing for the first respondent and according to the other respondents, they are only the formal respondents.

6. Admittedly, a sale agreement was entered between the revision petitioners and the first respondent to an extent of 20900 sq.ft., and both the parties further agreed to pay a sum of Rs.500/- per sq.ft. The present suit has been filed for specific performance. When that being the case, it is for the Court below before passing the decree, to find out the excess land available beyond 20900 sq.ft. The Court below, keeping in mind the same, has appointed the Advocate Commissioner to survey the property with the aid of the Surveyor and file a report. The appointment of the Advocate Commissioner will help the Court below to pass a suitable decree without wasting the Court time.

7. In the above circumstances, this Court is of the view that there is no infirmity in the order passed by the Court below in appointing the Advocate Commissioner with the aid of the surveyor and this Court is not inclined to interfere with the order passed by the Court below. Hence, the Civil Revision Petition is



dismissed. However, since the suit is of the year 2014, this Court directs the Advocate Commissioner to file a report within a period of one month from the date of receipt of a copy of this order without seeking any further extension of time and the Court below shall dispose of the suit in O.S.No.103 of 2014 within a period of four months from the date of receipt of the report of the Advocate Commissioner. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (RECORD)

// True Copy //

Sub Assistant Registrar (CS)

akv

To

The Principal District Munsif,
Dindigul.

+1 CC to MR.G.GOMATHI SANKAR, Advocate (SR-97385[F] dated 11/11/2019)

+1 CC to MR.M.P. SENTHIL, Advocate (SR-97485[F] dated 12/11/2019)

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