



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD)No.2241 of 2018

and

C.M.P. (MD)Nos.10092 of 2018 and 2649 of 2019

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N.Suryaprabha

... Revision Petitioner/
Petitioner/Plaintiff

Vs.

Thamim Ansari

... Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of Constitution of India as against the fair and decreetal order dated 23.03.2018 passed in I.A.No.105 of 2014 in O.S.No.270 of 2014 on the file of the I Additional Subordinate Judge, Madurai (Melur Camp).

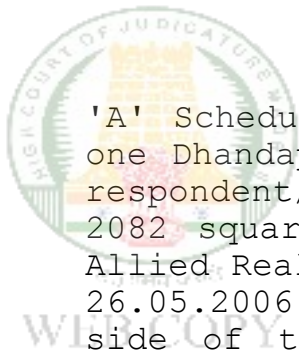
For Petitioner : Mr.R.Devaraj
For Respondent : Mr.P.Karthick

O R D E R

This Civil Revision Petition has been filed as against the fair and decreetal order dated 23.03.2018 passed in I.A.No.105 of 2014 in O.S.No.270 of 2014 on the file of the I Additional Subordinate Judge, Madurai (Melur Camp).

2.The petitioner herein has filed a suit in O.S.No.270 of 2014 against the respondent for permanent injunction in respect of B and C schedule properties and she has also filed an interlocutory application in I.A.No.105 of 2014 for appointment of Advocate Commissioner to inspect and measure the petition mentioned properties. After hearing both sides, the learned trial Judge has dismissed the I.A. Against which, the present Civil Revision Petition has been filed.

3. According to the petitioner, the petition mentioned property is described as three schedules. The suit 'A' schedule measures 2082 sq.ft. and 'B' and 'C' schedule properties form part of 'A' schedule property. The suit 'A' Schedule property and the adjacent properties were originally plotted out by Allied Realtors Limited. The site measuring undivided 809 square feet in the suit



'A' Schedule property was sold by Allied Realtors Private Ltd., to one Dhandapani through a registered sale deed dated 07.10.2005. The respondent/defendant purchased undivided 1273 square feet out of 2082 square feet in the 'A' Schedule property from the very same Allied Realtors Private Limited through a registered sale deed dated 26.05.2006. The said Company put up construction on the southern side of the 'B' schedule property leaving 'B' and 'C' schedule properties as common to the petitioner and the respondent for own use and enjoyment. The petitioner purchased 809 square feet in the 'A' schedule property along with right to use 'B' and 'C' schedule properties as common property through a registered sale deed dated 31.01.2014 from Dhandapani.

4. In this circumstance, the respondent's father attempted to prevent the petitioner from parking and stated that the petitioner does not have any right in the petition mentioned 'B' and 'C' schedule properties. Hence, the petitioner filed I.A.No.105 of 2014 for appointing Advocate Commissioner to inspect and measure 'A' to 'C' schedule properties with the help of a qualified engineer and to note down the physical features of the same and to file a report with rough sketch. The petitioner further stated that there is no dispute with regard to the title deed of the respondent's property. The only dispute is that whether the petition mentioned B and C schedule properties as common pathway lie within the property of the petitioner or the respondent.

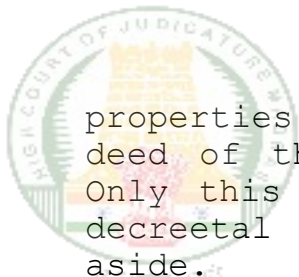
5. The learned counsel for the respondent would state that the alleged 'B' and 'C' schedule properties are in possession and enjoyment of the respondent and the petitioner cannot have right over the eastern and western side of the house.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. The petitioner and the respondent have purchased the properties from the very same vendor. The respondent cannot have land more than that what he has purchased and therefore, the entire properties have to be measured to mark A, B and C pathway.

8. It is seen from the petitioner's title deeds that 'B' and 'C' schedule properties are common pathway to be used by both parties and therefore, the learned counsel for the petitioner stated that only by way of appointing Advocate Commissioner to measure the properties, to identify the pathway which is 'B' and 'C' schedule properties. Therefore, to illustrate to that effect, the learned trial Judge ought to have allowed the application.

9. Taking into consideration of the submissions made by the learned counsel on either side, and also the facts and circumstances of the case, it would be fit and proper to remand the matter to the



properties in dispute, so as to identify the pathway as per the sale deed of the petitioner to be commonly used by both the parties. Only this will bring quietus to the issue. Hence, the fair and decreetal order passed by the Court below are liable to be set aside.

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10. In view of the above, the order passed in I.A.No.105 of 2014 in O.S.No.270 of 2014 is set aside and the matter is remanded back to the file of the I Additional Subordinate Court, Madurai (Melur Camp) to appoint an Advocate Commissioner along with Engineer within a time frame and the Advocate Commissioner shall identify the pathway and the properties of the petitioner and the respondent and thereafter, file a report, as ordered by the learned trial Judge.

11. In the result, this Civil Revision Petition is allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

msa

To

The I Additional Subordinate Judge
Madurai (Melur Camp).

+1 CC to M/s.P.KARTHICK, Advocate SR-81565.

+1 CC to M/s.R.DEVARAJ, Advocate SR-81648.

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