



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23..01..2020
CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.122 of 2020
and
C.M.P.No.739 of 2020

M.Mathivanan

... Petitioner

-Versus-

Dilip Kumar

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 06.12.2019 made in I.A.No.1 of 2019 in O.S.No.192 of 2016 by the learned Subordinate Judge, Gudiyattam, Vellore District.

For Petitioner	: Mr.N.Manokaran
For Respondent	: Mr.K.A.Ravindran

ORDER

This civil revision petition is directed against the order of the learned Subordinate Judge, Gudiyattam, dismissing the application filed by the petitioner seeking appointment of Advocate Commissioner for the purpose of noting down the physical features of the suit schedule property.

2. The petitioner herein is the defendant in the suit. The respondent herein filed the suit in O.S.No.192 of 2016 for specific performance of contract of agreement of sale pursuant to the agreement of sale dated 17.02.2016. Pending suit, the petitioner has filed an application to appoint an Advocate Commissioner to note down physical features of the entire extent of the property comprised in suit survey number which measures 1 Acre and 2 cents. According to the petitioner, he had put up pucca constructions covering the entire suit property and the petitioner has been running school therein. He borrowed a paltry sum from the respondent for which as a security he had executed an agreement of sale. There was no intention at all for the petitioner to convey any piece of property. Further, according



to the petitioner, there is no vacant site available in the suit property and there are constructions on the entire land. Only in order to probabilise his defence, he wanted to get an Advocate Commissioner appointed so as to find out as to whether there is any vacant site available as alleged by the respondent or not. However, the court below without properly appreciating the facts and circumstances of the case, dismissed the application.

3. The learned counsel appearing for the respondent would contend that the agreement of sale is genuine and the petitioner had intentionally entered into an agreement of sale. Since the suit property which is sought to be conveyed under the agreement is situated on north of the property owned by the respondent's father, the respondent expressed his interest to purchase the same and entered into an agreement of sale with the petitioner. According to the learned counsel, there is a vacant site still available and the entire land in suit survey number is not covered by constructions.

4. I have considered the rival submissions carefully.

5. According to the petitioner, the entire extent of land in the survey number in question is covered by pucca RCC constructions and the petitioner is running a school therein. There is no vacant site available. The petitioner has also taken a defence that sale agreement has been executed only as a security for the loan obtained from the respondent. Only in order to probabilise his defence, he had to file an application for appointment of Advocate Commissioner so to establish the physical features of the entire property in question. I find some force in the submissions of the learned counsel for the petitioner. The petitioner asserts that there is no vacant site available in the suit survey number. The respondent's case is that there is vacant site which the petitioner agreed to convey to the respondent. In such a situation, the petitioner may not be in a position to establish his defence and he can prove the same only by getting a report from the Advocate Commissioner. The court below has not approached the issue properly and has erroneously rejected the request of the petitioner for appointment of Advocate Commissioner. Thus, the order of the court below requires interference at the hands of this court.

In the result, the Civil Revision Petition is allowed. The order passed by the court below dated 06.12.2019 made in I.A.No.1 of 2019 in O.S.No.192 of 2016 is set aside and the application is allowed. The court below is directed to appoint an Advocate Commissioner for the purpose stated in the



application as per the procedure within a period of two weeks from the date of receipt of a copy of this order and get a report and rough plan and thereafter proceed with further in accordance with law. No costs. Consequently, connected CMP is closed.

s/d-
Assistant Registrar(CS-III)

True Copy
Sub-Assistant Registrar

kmk

To

1.The Subordinate Judge, Gudiyattam, Vellore District.

+1 cc to M/s.K.A.Ravindran Advocate sr4948

+1 cc to M/s.N.Manokaran Advocate sr4904

C.R.P.No.122 of 2020

aa02/07/2020