

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

C.R.P(PD).No.3949 of 2015

and

M.P.No.1 of 2015

Senthilkumar

... Petitioner

Vs.

1.Sri Uthirapathi Madam Samasthanam,
Thenparai Village, Mannargudi Taluk,
Thiruvarur District
Rep.by its Manager & Power of Attorney Agent
G.Ragothamachar.

2.A/m.Mariamman Thirukkovil,
North Thenparai,
Rep.by its Manager, Balappan.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 26.06.2015 in I.A.No.206 of 2015 in O.S.No.137 of 2013, on the file of the District Munsif Court, Mannargudi.

For Petitioner : Mr.A.Sundaravadhanan

For Respondents : No appearance

ORDER

This Civil Revision Petition has been filed by the petitioner/plaintiff against the dismissal of his application in I.A.No.206 of 2015 in O.S.No.137 of 2013 on the file of the District Munsif Court, Mannargudi, dated 26.06.2015.

2. The petitioner herein had filed an application in I.A.No.206 of 2015 in O.S.No.137 of 2013 on the file of the District Munsif, Mannargudi, under Order 26 Rule 9 and Section 151 of CPC, to appoint an Advocate Commissioner to measure the suit property, the property which has been purchased by the second respondent/second defendant and the property which is said to be in possession of one Nataraja Udayar as stated in the written statement, with the help of a qualified Surveyor by referring to the revenue records and fix the boundaries and analyze within which boundaries, the aforesaid properties are situated and file a detail report with plan. The learned District Munsif had dismissed the said application by the order dated 26.06.2015. Feeling aggrieved, the petitioner/plaintiff has filed the present Civil Revision Petition.

3. Eventhough notice was served on the respondents and their names also printed in the cause-list, they have not appeared either in person or through counsel. Hence, after hearing the arguments of the learned counsel for the petitioner and perusing the materials filed along with this petition, order is being passed in this petition.

4. The learned counsel for the petitioner/plaintiff has submitted that the petitioner herein has filed a suit in O.S.No.137 of 2013 on the file of the District Munsif, Mannargudi, for specific performance of oral sale agreement dated 24.01.2011 in respect of the property measuring 0.03 cents situated in S.No.292/1C Thenparai Village, Mannargudi Taluk, Plot No.14 with specific boundaries. He further submitted that the first respondent entered into an oral sale agreement with the petitioner on 24.01.2011 in respect of the aforesaid property to sell the same for Rs.4,500/- and the petitioner had paid a sum of Rs.3,000/- as advance and the first respondent after receipt of the said amount, issued a receipt and also handed over the possession of the said property to the petitioner herein. He further submitted that subsequently, the petitioner came to know that the first respondent had executed a sale deed in favour of the

second respondent on 05.08.2013 and hence, the petitioner had filed a suit for specific performance impleading both the respondents as defendants.

5. He further submitted that the first respondent after entering appearance in the suit had filed written statement stating that the said receipt was issued with regard to another property situated in the same Village but the same is in possession of one Nataraja Udayar and he has not entered agreement with the petitioner with regard to the suit property and hence it has become necessary for the petitioner to prove that the agreement was entered only with regard to the suit property. Hence, the petitioner filed a petition to appoint an Advocate Commissioner to measure the suit property, the property which is said to be in possession of one Nataraja Udayar as per the averments made in the written statement filed by the first respondent and the property which has been purchased by the second respondent from the first respondent and boundaries have to be checked and file a report, which would help the Court to decide the issue that the agreement was entered between the petitioner and the first respondent only in respect of the suit property.

But, the learned District Munsif without considering the said fact had

dismissed the said application and therefore, he prayed to allow this Civil Revision Petition and set aside the order passed by the learned District Munsif in I.A.No.206 of 2015 and allow the same.

6. A perusal of the typed set of papers filed by the petitioner shows that the petitioner herein had filed a suit in O.S.No.137 of 2013 on the file of the District Munsif, Mannargudi, for specific performance in respect of the suit property measuring 0.03 cents situated in S.No.292/1C of Thenparai Village, Mannargudi Taluk. In the plaint, the petitioner has stated that he entered into an oral sale agreement with the first respondent on 24.01.2011 for purchasing the suit property for Rs.4,500/- and on the same day, he paid a sum of Rs.3,000/- as advance and after receipt of the said amount, the first respondent had issued a receipt acknowledging the said payment. He further stated that on the said date itself, possession of the suit property was also given to him and he had been enjoying the same by putting haystack and manure pit. He further stated that subsequently, he came to know that the first respondent had executed a sale deed in favour of the second respondent in respect of the suit property on 05.08.2013 and hence, he issued a notice calling upon the first respondent to execute a sale deed in pursuance of the aforesaid

oral sale agreement and the said notice has been received by the first respondent and sent a false reply dated 27.08.2013, but he has not come forward to execute a sale deed and hence, he was constrained to file the aforesaid suit. Though in para No.2 of the plaint, the petitioner has stated that possession was given to him on the date of oral sale agreement itself, in the prayer, he has stated that the first respondent should be directed to execute the sale deed and both the respondents should be directed to deliver the possession of the suit property.

7. It is also to be pointed out that the first respondent in his written statement has not disputed the oral sale agreement with the petitioner and also issuance of receipt dated 24.01.2011. On the contrary, he has stated that the said agreement was entered with regard to some other property which is in possession of one Nataraja Udayar and in such a case, whether the petitioner entered into a sale agreement with the first respondent in respect of the suit property or in respect of the property which is in possession of the said Nataraja Udayar has to be decided by adducing oral and documentary evidence. The said issue cannot be decided by measuring the property.

8. There is no dispute with regard to the measurements and the dispute is only with regard to the identification of the property. In the written statement, the first respondent has not stated that the property which is in possession of Nataraja Udayar is adjacent to the suit property. In case both the properties are adjacent properties and there is a difficulty in identifying the said property, there is a reason in asking for appointment of Advocate Commissioner. Here the first respondent has stated that he has entered into sale agreement with the petitioner in respect of the property which is in possession of one Nataraja Udayar. Therefore, the said question is also to be decided only after adducing oral evidence. This Court is of the view that after taking into consideration the aforesaid fact, the trial Court has rightly dismissed the application and in the said order, this Court does not find any infirmity.

9. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

21.12.2020

Index :Yes/No
dna

CRP (PD).No.3949 of 2015

P.RAJAMANICKAM.J.,
dna

To

The District Munsif Court,
Mannargudi.



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and
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