

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

**C.R.P(PD)No. 3622 of 2018**

**and**

**C.M.P.No. 20221 of 2018**

K.P.Tamilkumaran

...Petitioner

Vs.

A.K.Palanisamy

...Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 12.10.2018 in I.A.No. 1582 of 2018 in O.S.No. 37 of 2017 on the file of the III – Additional District Judge, Gobichettipalayam.

For Petitioner : Mr.A.Veerassamy

For Respondent :Mr.A.K.Kumarassamy, Senior Counsel for  
M/s.Kaithamalai Kumaran Associates

**ORDER**

The defendant in O.S.No. 37 of 2017, a suit for specific performance, has come up with this civil revision petition, aggrieved by an order dismissing his application for appointment of a Commissioner to

assess the market value of the suit property with the assistance of Public Works Department Engineer.

2. The plaintiff laid the suit for specific performance based on an agreement dated 19.05.2017. This suit is being defended contending that the agreement was not meant to be a sale agreement but it was executed for a security for a loan transaction. In support of the said claim. It was also contended that the value of the property is around a crore of rupees and therefore, the defendant would not have agreed to sell the property for Rs.41,00,000/- as claimed by the plaintiff. Pending suit, the defendant came up with an instant application seeking aid of the Court to collect evidence to prove the market value of the property.

3. I have heard Mr.A.Veerasingh, learned counsel for the petitioner and Mr.A.K.Kumarasingh, Senior Counsel for M/s. Kaithamalai Kumaran Associates for the respondent.

4. I am convinced that the Trial Court was right in dismissing the application for appointment of Commissioner to fix the market value of the property. The dispute regarding the value of the property is beyond the very scope of a suit for specific performance. The defendant has to prove his defence that the agreement was intended to be a security for a loan transaction and not actually an agreement of sale. To prove such a

contention, he can let in evidence to prove the value of the property but, he cannot seek aid of the Court to gather evidence by seeking appointment of a Commissioner to assess the market value with the assistance of Public Works Department Engineer.

5. I am therefore, of the opinion that the order of the Trial Court does not need any interference. Exercise now made is only an attempt to gather evidence. Therefore, this civil revision petition fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs. It will be open to the defendant to let in whatever evidence he wants to prove the market value of the property and the dismissal of this application for appointment of Commissioner will not stand in the way.

**04.12.2020**

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Internet: Yes

Index: No

Speaking

To:

The III – Additional District Judge,  
Gobichettipalayam.

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**R.SUBRAMANIAN, J.**

KKN



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