

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

**C.R.P(PD).No.167 of 2019
and
C.M.P.No.1373 of 2019**

Loganathan

...Petitioner

Vs

1.Muthurathinam
2.Thambusami
3.Gandhimathi

...Respondents

Revision Petition filed under Article 227 of the Constitution of India
to set aside the order dated 11.12.2018 made in I.A.No.405 of 2018 in
O.S.No.179 of 2018 on the file of the Sub Court, Palladam.

For Petitioner : Mr.J.Hariharan

For Respondents

R1 : Mr.S.Sathya

R2 & R3 : No appearance

ORDER

The revision petition has been filed by the plaintiff in O.S.No.179 of 2018 pending on the file of the Sub Court, Palladam questioning the order in I.A.No.405 of 2018 dated 11.12.2018.

2.The said application was filed by the petitioner herein seeking appointment of an Advocate Commissioner. It is to be mentioned that the petitioner herein had filed the said suit which was originally instituted as O.S.No.52 of 2011 before the Sub Court at Tirupur seeking a declaration that a sale deed dated 07.07.2009 executed by the first defendant in favour of the third defendant is null and void and is not binding on the plaintiff and also for a declaration on the right, title and possession of the plaintiff over the suit property and also for a consequential injunction restraining the defendants from interfering with the peaceful possession of the plaintiff. In the schedule to the plaint, the description of the property was also given and it was given as land and farm house measuring an extent of 2.35 acres bearing door No.1/142-C along with electricity service connection in Sukkampalayam Village, Palladam Taluk. In the written statement filed by

the third defendant, the allegations in the plaint were denied and the fact that the plaintiff was in possession was also very specifically denied. The defendants also claimed that they had patta in their name. It is to be mentioned that on the basis of the pleadings, issues were framed and the parties were invited to adduce evidence. Both the plaintiff and the defendants took up that opportunity and adduced both oral and documentary evidence. During evidence, it was stated by the defendants that the property is actually an agricultural field.

3.It is the contention of Mr.J.Hariharan, learned counsel for the petitioner that quite apart from other documents, the plaintiff had also filed the necessary documents to indicate that there is a factory in existence in the schedule property and that there is also a house in the said property and primarily it was not entirely an agricultural field as contended by the defendants.

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4.I am confident that the learned Sub Judge at Palladam will deliver a judgment based on the evidence recorded and on analysis of the evidence

available and tendered during the course of trial.

5.However, in order to determine whether the property contained a house or was an agricultural field, the plaintiff herein at the time of advancing arguments had filed I.A.No.405 of 2018 for appointment of an Advocate Commissioner to determine the physical features of the property. The said application came to be dismissed necessitating filing of the present revision petition. In the course of the order, the learned Sub Judge had stated that the trial of the suit had been completed and it is posted for arguments. The learned Judge had also stated that the case of the petitioner was that he is residing in the suit property, paying house tax, having electricity connection, water tap connection and that he is also doing hollow block brick work in the suit property. Now the evidence adduced will have to be analysed by the learned Judge and based on the evidence determine whether the stand of the petitioner is probable, possible and acceptable. The learned Judge had also observed that oral and documentary evidence had been let in by both the sides. He has also stated that the Advocate Commissioner cannot be relied on to give a report relating to the possession

of the property. That aspect of the learned Judge's order is correct. However, it is the stand of the learned counsel for the petitioner that to determine the physical features, appointment of an Advocate Commissioner is required.

6.I would rather leave it to the wisdom of the learned Judge to decide not only on the issue of possession but also on the nature of the property which is being disputed by both the parties. Evidence had already been let in. Both the parties have been given fair opportunity to adduce evidence, both oral and documentary. That evidence will have to be now analysed and a finding will have to be given on the issues raised in the suit. A rowing enquiry by appointment of an Advocate Commissioner after both the plaintiff and the defendants have let in evidence may not be appropriate and I hold that there is any error on the order of the learned Sub Judge. Both the parties are well advised to go back before the Trial Court and advance arguments on the basis of the evidence adduced.

7.In view of the above said reasons, the Civil Revision Petition is

dismissed. No order as to costs. Consequently, connected miscellaneous petition is closed.

8.Both the learned counsels are also not aware whether the suit is still pending. If it is still pending, the learned Sub Judge, Palladam may bestow personal attention and dispose of the suit and an obligation is also laid on the learned counsels who appear before the Trial Court to, without seeking any further adjournments, advance arguments in the said matter. If the arguments are advanced, I am confident that the learned Sub Judge will dispose of the suit within a reasonable time.

08.04.2021

cse
Index: Yes/No
Internet: Yes/No

To

The Sub Judge,
Palladam.

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C.V.KARTHIKEYAN, J,

cse



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