

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.2165 of 2021
and C.M.P. No.16400 of 2021

V.Janagi

...

Petitioner /
Defendant

versus

K.M.Krishnacharan

...

Respondent /
Plaintiff

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 09.03.2020 made in I.A.No.155 of 2019 in O.S.No.61 of 2019 on the file of the learned Principal District Munsif, Poonamallee.

For Petitioner : M/s.Paul and Paul

ORDER

This Civil Revision Petition is filed, against the order dated 09.03.2020 passed by the learned Principal District Munsif, Poonamallee in I.A.No.155 of 2019 in O.S.No.61 of 2019.

2. The learned counsel for the petitioner submitted that, the respondent filed the suit for the relief of permanent injunction, restraining the petitioner from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. The suit property is $8\frac{3}{4}$ cents out of 28 cents in Survey No.160 in Vilinjambakkam Village, bounded on the

North by : lands purchased by the defendant

South by : S.No.159

East by : 14 feet road in S.No.160

West by : Narayanasamy Naidu Plot, 12 feet Bajanai Koil Street and Kuppa Naidu Plot

measuring east to west 96 feet on both sides and North to South 45 feet on the eastern side and 35 feet on the Western side.

3. He further submitted that the respondent filed I.A.No.155 of 2019 under Order 26 Rule 9 r/w Section 151 of C.P.C. for appointing an Advocate Commissioner to identify the respondent's property and also the petitioner's property, namely, $17\frac{3}{4}$ cents alleged to have been purchased by the petitioner. However, the learned Principal District Munsif,

instead of directing the Advocate Commissioner to measure the property of the respondent, directed the Advocate Commissioner to inspect and measure the petition mentioned property alone. Unless the properties of both the parties are measured, the issue between the parties cannot be resolved. Therefore, the learned counsel for the petitioner prays that, the Commissioner may be directed to inspect the properties of the petitioner and the respondent.

4. Considered the submissions of the learned counsel for the petitioner and perused the records.

5. The reading of the plaint averments shows that the vendors of the petitioner and the respondent, are the same persons. They owned an extent of 28 cents in Survey No.160. The respondent's case is that, he purchased $8\frac{3}{4}$ cents out of 28 cents. It is also his case that petitioner said to have purchased $17\frac{3}{4}$ cents in Survey No.160. There is a dispute with regard to the identification of the property purchased by both of them. Therefore, the suit came to be filed.

6. The suit was filed only for the relief of permanent injunction. In the nature of dispute and claim made, this Court is of the considered view that if the property of the respondent is alone measured, the issue will not resolved between the parties. Therefore, this Court accepts the submissions made by the learned counsel for the petitioner and modifies the order of the learned Principal District Munsif. The Advocate Commissioner is directed to inspect and measure the property of the petitioner and respondent in Survey No.160, identify the property possessed by them, on the basis of then title deeds and the revenue records and file the report along with plan. It is seen from the order that the Commissioner's fee was fixed at Rs.7,500/- and if any enhancement fee is ordered by the Court, the fee has to be paid equally by the petitioner and the respondent.

7. Accordingly, this Civil Revision Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. However, there is no order as to costs.

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Speaking order / Non-speaking order
Index : Yes / No
psa / sri

To

The Principal District Munsif,
Poonamallee.



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G.CHANDRASEKHARAN, J.

psa / sri



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