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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.CHANDRASEKHARAN

C.R.P. No.2200 of 2020
and C.M.P.No.13889 of 2020

(Through Video Conference)

- 1) Pattammal
- 2) A.Chittibabu
- 3) Jayanthi
- 4) Vijayan

...Petitioners

Versus

M.Dhanraj

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in I.A.No.2/2019 in O.S.No.115 of 2017, on the file of Sub Court, Tiruvallur, dated 12.10.2020 below is contrary to law, erroneous and unjust.

For Petitioners : M/s.V.Srimathi

For Respondent : Mr.S.Parthasarathy,
Senior Counsel for M/s.Rajalakshmi
for sole Respondent

O R D E R

This Civil Revision Petition is filed to set aside the order passed in I.No.2 of 2019 in O.S.No.115 of 2017 passed by the learned Sub Judge, Thiruvallur on 12.10.2020.

2. I.A.No.2 of 2019 was filed under Order XXVI Rule 9 and Section 151 of the Civil Procedure Code, for appointing an Advocate Commissioner to measure the property of the plaintiffs and defendant and also the property of one Bakthavachalam, who is his senior paternal uncle of the petitioner.

3. Learned counsel for the petitioners submitted that there is a dispute with regard to identification of the property of the petitioners and defendants. Only if an Advocate Commissioner is appointed, the issue with regard to identification of the property can be resolved. Therefore, the present I.A. has been filed. However, the learned Sub Judge, Thiruvallur has dismissed



the petition on the wrong reasoning of the judgments quoted before the Court in the case of A.Meganathan vs. S.Ramalingam reported in 2017(3) MWN (Civil) 627 and in the case of Santha Satheesh vs. H.J.Walter and others reported in 2013 (1) MWN (Civil) 248. In fact, it is submitted that the learned trial Judge has not understood the ratio of the judgments and decided the petition on the basis of these judgments even without going into the text of the judgment and the ratio laid down in these judgments. It is retreated that the appointment of an Advocate Commissioner is absolutely necessary for resolving the issue between the parties.

4. Learned counsel for the respondent opposed this petition on the ground that there is no issue with regard to identity of the property. The fact of the matter is that the plaintiffs have no right in the suit property. The plaintiff's father Anandhan was allotted 135 links in the partition among his brothers. He sold 93 links to one Rajabadhur Mudaliyar as per the registered sale deed dated 09.07.1979. Then, he had sold the remaining extent of 42 links on 25.03.1982 to the defendant. Since the date of purchase, the defendant is in the possession and enjoyment of the property, the plaintiffs have no right at all in the property but have filed this frivolous suit.

5. In the suit before the trial Court, evidences were recorded and in fact, the case is pending for hearing of arguments of the parties. This petition is filed at the fag end of the trial and when this matter is pending for argument only to drag on the proceedings. He further submitted that the learned Judge has considered all these aspects elaborately in the order and specifically in paragraph no.10, has dismissed the petition.

6. This suit is filed seeking for the relief of declaration of title and permanent injunction in respect of the suit property. Reading of the order of the learned Sub Judge, Tiruvallur shows that through Ex.B1/ Sale deed the property was already sold to the defendant. Ex.B1 Sale Deed was marked through P.W.1. When P.W.1 was cross examined, he clearly admitted Ex.B1/ Sale Deed, dated 25.03.1982.

7. In the light of this revelation, this Court is of the considered view that the claim of the parties in the suit property has to be decided only based on the oral and documentary evidence. There is no issue with regard to the identification of the suit property is involved. The appointment of the Advocate Commissioner, in the facts and circumstances of the case, is absolutely not necessary. The learned Sub Judge, Tiruvallur has considered all the relevant aspects in right prospective and has dismissed the petition.



This Court finds no reasons to interfere with the order passed by the learned Sub Judge, Tiruvallur and the order stands confirmed. Thus, the Civil Revision Petition is Dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To:

The Subordinate Judge,
Tiruvallur.

+1cc to M/s.Dinesh Kumar, Advocate, S.R.No.40873

C.R.P. No.2200 of 2020

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