

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.195 of 2017
and C.M.P.No.854 of 2017

P.Uma

.. Petitioner

Vs.

S.Mohandasani

.. Respondent

PRAYER: Civil Revision Petition filed under Section 115 of C.P.C.,
against the fair and decretal order dated 24.11.2016 made in I.A.No.690
of 2016 in O.S.No.200 of 2011 on the file of the District Munsif Court,
Sirkali.

For Petitioner : Mr.P.Jagadeesan

For Respondent : Mr.K.Raghuraman

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).)

Civil Revision Petition is filed against the fair and decretal order dated 24.11.2016 made in I.A.No.690 of 2016 in O.S.No.200 of 2011 on the file of the District Munsif Court, Sirkali.

2.The petitioner is defendant and respondent is plaintiff in O.S.No.200 of 2011 on the file of the District Munsif Court, Sirkali. The respondent filed the said suit against the petitioner for declaration that the sale deed dated 14.02.2011 is invalid, ultravires and illegal and for permanent injunction restraining the petitioner from alienating the suit property. The petitioner filed written statement in the month of January, 2012 itself and is contesting the suit. In the written statement, the petitioner has stated that the properties of the petitioner and respondent are entirely different and the properties can be identified only by measuring the properties with the help of Surveyor. The trial commenced, respondent let in evidence and closed his side. The petitioner was examined as D.W.1 and the suit was posted for further cross-examination

of D.W.1. At that stage, the petitioner filed I.A.No.690 of 2016 under Order XXVI Rule 9 of C.P.C. to appoint an Advocate Commissioner to measure the suit property and the petitioner's property with the help of Surveyor on the ground that the properties of the petitioner and respondent are different and the same can be identified by measuring with the help of Surveyor. The petitioner contended that he is in possession of the property and the same can be proved only by the report of the Advocate Commissioner.

3.The respondent filed counter affidavit and opposed the said application. The respondent has stated that the petitioner is in the habit of filing application after application with an intention to delay the proceedings. The respondent has purchased the property by the sale deed dated 18.02.2004 and is in possession and enjoyment of the suit property. The petitioner by playing fraud, obtained the sale deed dated 14.02.2011. Pending suit, the said sale deed was cancelled by the District Registrar, Mayiladuthurai. The appeal filed by the petitioner before the Inspector

General of Registration was also dismissed. In such circumstances, the petition for appointment of Advocate Commissioner to measure the property with the help of Surveyor is only to drag on the proceedings and prayed for dismissal of the said I.A.

4.The learned Judge considering the averments made in the affidavit and counter affidavit, dismissed the I.A. holding that the petitioner has not filed any document to show that the sale deed in her favour is not cancelled, the written statement was filed only on 18.01.2012 and the present I.A. is belated one after four years of filing the written statement.

5.Against the said fair and decretal order dated 24.11.2016 made in I.A.No.690 of 2016 in O.S.No.200 of 2011 on the file of the District Munsif Court, Sirkali, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel appearing for the petitioner contended that

the dispute in the suit is regarding identity of the property purchased by the petitioner and hence, the appointment of Advocate Commissioner is absolutely necessary to find out the identity of the suit property. The properties of the petitioner and respondent are totally different and the same can be proved only by way of an inspection by the Advocate Commissioner. The order of the learned Judge dismissing the I.A. filed by the petitioner for appointment of Advocate Commissioner merely because the District Registrar, Mayiladuthurai, cancelled the sale deed of the petitioner dated 14.02.2011 is erroneous. The order of cancellation of sale deed dated 14.02.2011 is not final. The petitioner has filed writ petition challenging the dismissal of the appeal by the Inspector General of Registration. Further, finding of the learned Judge that the application is filed belatedly after the suit was taken up for trial is erroneous and prayed for allowing the Civil Revision Petition.

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7.Heard the learned counsel appearing for the petitioner as well as

the learned counsel appearing for the respondent and perused the materials on record.

8.From the materials available on record, it is seen that the respondent has filed suit against the petitioner for declaration that the sale deed dated 14.02.2011 is invalid, ultravires and illegal and for permanent injunction. The petitioner filed written statement in the month of January 2012 and stated that the properties of the petitioner and respondent are entirely different and the property could be identified only by measuring both the properties with the help of Surveyor. After commencement of trial, when the suit was posted for continuation of evidence of the petitioner as D.W.1, the petitioner has come out with the present I.A. in the year 2016. The petitioner alleges that the respondent has not taken any steps to measure the properties of the petitioner as well as the respondent in spite of the stand taken by the petitioner in the written statement. When the petitioner is taking a stand that both the properties of the petitioner as well as the respondent are different in the written statement itself, it is for the petitioner to prove the same. Further,

the petitioner has not denied that the sale deed dated 14.02.2011 sought to be declared as invalid, ultravires and illegal by the respondent was cancelled by the District Registrar, Mayiladuthurai and the appeal filed by the petitioner before the Inspector General of Registration was dismissed. The petitioner has raised a ground that the cancellation of the sale deed is not final and conclusive and the petitioner can always challenge the same. The petitioner has not denied the contention of the respondent that the petitioner filed application after application to drag on the proceedings. Further, the learned Judge has rightly pointed out in the impugned order that the petitioner can always examine the Revenue officials to prove that the properties of the petitioner and respondent are different. Similarly, it is also open to the petitioner to prove that she is in possession of the property by letting in acceptable evidence. Considering all the above materials, the learned Judge has rightly dismissed the I.A. by giving cogent and valid reason. There is no error or irregularity in the order of the learned Judge warranting interference by this Court.

9.In the result, the Civil Revision Petition stands dismissed. No

costs. Consequently, connected Miscellaneous Petition is closed.

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Index :Yes/No

Internet :Yes/No

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To

The District Munsif
Sirkali.



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