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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.12.2021
CORAM
THE HONOURABLE MS.JUSTICE P.T.ASHA
C.R.P(MD)No.821 of 2020 &
CMP(MD)No.5575 of 2020

S.Selvarani ... Revision Petitioner/Respondent/ Defendant

Vs.

L.Veeran ... Respondent/Petitioner/Plaintiff

PRAYER:- Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order passed in IA.No.50 of 2020 in OS.No.55 of 2019 dated 27.07.2020 on the file of the District Munsif cum Judicial Magistrate, Aravakurichi.

For Petitioner : Mr.K.Suresh
For Respondent : Mr.T.Antony Arulraj

ORDER

This revision petition is filed by the defendant challenging the order passed in IA.No.50 of 2020 in OS.No.55 of 2019, in and by which, the learned District Munsif cum Judicial Magistrate, Aravakurichi allowed the application filed by the respondent/plaintiff for appointment of Advocate Commissioner to note down the existing physical features of the suit property.

2. The facts in brief are as follows.

(i) The respondent/plaintiff has filed a suit for mandatory injunction to remove the unlawful construction put up on the suit property and for consequential possession against the petitioner/defendant. The respondent/plaintiff would submit that he has purchased the property under a registered sale deed and has been in exclusive possession and enjoyment of the same. The suit property exists as a vacant site. The petitioner/defendant who had purchased the property which is on the north of the suit property has commenced construction and while constructing she had encroached into the respondent/plaintiff's property taking advantage of the absence of the respondent/plaintiff from the suit property. In order to note down the above fact and to remove the offending structure, it is necessary that the same should be measured. For this reason, the respondent/plaintiff had sought for appointment of Advocate Commissioner.

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(ii) In the counter filed by the petitioner/defendant, she had denied the contentions made by the respondent/plaintiff. The petitioner/defendant would submit that the respondent/plaintiff had already obtained a decree in OS.No.35 of 2012 in his favour and he cannot therefore institute a fresh suit for the very same relief. In fact, in the earlier suit, the said property to an extent of 3 cents was described as A schedule property and S.F.No.378/1-D measuring 00.45.0 square meters was described as B schedule property. It is also the case of the petitioner herein that she had filed a suit in OS.No.525 of 2012 in respect of the B schedule property and both the suits had been jointly tried and a common judgment came to be delivered, decreeing the suit regarding the A schedule property in favour of the respondent/plaintiff and dismissing the suit regarding the B schedule property in OS.No.35 of 2012 and decreeing the suit in OS.No.525/2012 in respect of the B schedule property in favour of the petitioner/defendant. The petitioner/defendant would submit that she had put up construction only on her land and has not encroached into the respondent/plaintiff's property. She would further submit that the respondent/plaintiff has in fact, wrongly stated the survey number and it cannot be measured by the Advocate Commissioner. The petitioner/defendant has put up construction under Government Scheme and she has to complete the construction within 3 months. The present suit is an attempt to prevent the petitioner/defendant from putting up construction.

(iii) The learned Judge after perusing the records and after hearing the parties had proceeded to allow the petition. The learned Judge had passed the following order.

> *"Since the present application is filed for only limited relief to inspect the suit property and note down the physical features of the same, this Court is inclined to allow the application.*
>
> *In the result, Mr.S.Balasubramaniyan, Advocate is appointed as Advocate/Commissioner is directed to give due notice to the both parties. Visit the suit property in the presence of both the parties and their respective counsels and take measurement of the suit property with the help of the qualified firka surveyor and VAO available in the locality and to note down the existing nature of the suit property and all other physical features in and around and adjacent to the suit property of the litigants, at the time of measuring the suit property learned Advocate Commissioner is directed to consider the description of suit property mentioned in the decree in OS.No.35 of 2012 and the revenue records (F M B) concerned to the suit property and further he is directed that to measure*

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the suit property and distinct the available extent of the suit property as per the decree in OS.No.35 of 2012 and the revenue records and to submit his detailed report and plan alongwith surveyor plan before this court on or before 31.08.2020."

Challenging the same, the petitioner/defendant is before this Court.

3. Heard the learned counsel on either sides and perused the records.

4. A mere perusal of the order clearly indicates that the learned Judge has granted a relief much more than what was sought for by the respondent/plaintiff and on this ground alone, the order deserves to be set aside. However, considering the fact that the appointment of Advocate Commissioner would definitely help the Court to come to a conclusion as to whether there has been encroachment into the respondent/plaintiff's property, the impugned order is modified and the Advocate Commissioner shall inspect the suit property with the help of surveyor, compare it with the sale deed in favour of the respondent/plaintiff, note down the physical features and submit his report with plan. With the above modification, this Civil Revision Petition is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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To

The District Munsif
cum Judicial Magistrate, Aravakurichi.

+1 CC to M/s.T.ANTONY ARULRAJ, Advocate (SR-39297[F] dated 17/12/2021)

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