



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2021

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (MD) No.1428 of 2021

and

C.M.P. (MD) No.8046 of 2021

S.Selvi

... Petitioner

vs.

M.Uma Maheshwari

... Respondent

PRAYER:- This Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 05.08.2021 made in I.A.No.02 of 2021 in O.S.No.231 of 2021 on the file of the 1st Additional District Judge (PCR), Tiruchirappalli.

For Petitioner : Mr.K.S.Kathiravan
For Respondents : Mr.Shangar Murali

ORDER

Aggrieved by an order appointing an Advocate Commissioner to note down the physical features and measure the property with the assistance of the qualified Surveyor as per the parent document and title deeds of the petitioner/respondent, the defendant is before this Court. The parties are referred to in the same rank as before the trial Court.

2.The facts in brief are as follows:-

2.1.The suit property measuring an extent of 4908 sq.ft., in K.Abishekapuram Village comprised in Old.SF.No.173/1A, New.TS.No.1/3 within specified boundaries was purchased by the plaintiff and her husband, namely, S.Murali Sundaram from one Gajendran, S/o.Muthukrishnan. The plaintiff claims a right to the suit property on the basis of the sale deeds dated 13.11.2015 and 16.12.2015. It is also her case that the defendant had purchased an extent of 4908 sq.ft. from one Vincent Leela in Old S.F.No.173/1A I part. However, the four boundaries given in the sale deed are an imaginary and misleading one as there is no such property comprised in S.F.No.173/1A I part. Both the plaintiff and the defendant traced their title from the original owner, Munusamy Naidu.



2.2. Pending the above suit, the plaintiff had also come forward with an application in I.A.No.2 of 2021 for appointing an Advocate Commissioner to note down the physical features of the petition mentioned properties, to survey and measure the same with the assistance of the qualified Surveyor and file the report.

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2.3. The plaintiff in the affidavit filed in support of the said application would submit that unless the property of Munusamy Naidu, which was bequeathed by him in favour of his sons, namely, Muthukrishnan and Dhamodharan measuring an extent of 0.67 cents, which shown as 'B' schedule property in the suit schedule property, is measured, the encroachment committed by the defendant cannot be assessed. Therefore, he would seek to have the Advocate Commissioner appointed. The plaintiff had also stated that her property does not form part of the 0.67 cents, which was bequeathed to Muthukrishnan and Dhamodharan, whereas, the property of the defendant falls within this 0.67 cents.

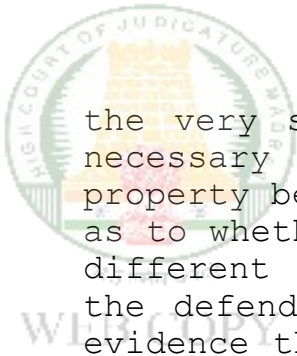
2.4. A counter was filed by the defendant *inter alia* contending that it is the plaintiff, who has no title over the suit schedule property and a fraudulent suit claiming a non-existent right has been filed. It is the case of the defendant that she alone is in possession and enjoyment of the property, wherein, she is running a business under the name of Iswarya Steel Corporation. The defendant would submit that she has been in possession and enjoyment of the property even prior to the purchase as a tenant. She would contend that the property purchased by her is a patta property situate well within the 0.67 cents in S.F.No.173/1 within specified boundaries. The defendant has seriously objected to the appointment of the Advocate Commissioner.

2.5. The learned 1st Additional District Judge, Tiruchirappalli, by order dated 05.08.2021 was pleased to allow the application considering the fact that the plaintiff and the defendant claim a right to the very same property. The defendant has challenged the said order.

3. The learned counsel appearing on behalf of the defendant would submit that the plaintiff is required to prove her case with her documents and that the report and plan of the Advocate Commissioner will not help in deciding the question of title between the parties. Further, the Advocate Commissioner cannot be used to gather evidence. Therefore, he would submit that the order has to be set aside.

4. Heard the learned counsel and perused the records.

5. The dispute between the parties lies in a very narrow compass, namely, the location of the suit schedule property and whether the property conveyed to the defendant and the plaintiff are



the very same property. In order to identify the property, it is necessary that the physical features and the measurement of the property be done so as to enable the Court to come to the conclusion as to whether the suit property and the defendant's property are two different properties or they are one and the same as contended by the defendant. It would help in reducing the oral and documentary evidence that the parties may have to file in order to substantiate their respective cases. I do not find any infirmity in the order passed by the learned 1st Additional District Judge, Tiruthirappalli, particularly, when the learned Judge had directed the Advocate Commissioner to note down the physical features and measure the entire survey number along with the parent document and title deeds of both the petitioner as well as the respondent.

6. In these circumstances, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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To

The 1st Additional District Judge,
Tiruchirappalli.

+1 CC to M/s.K.S. KATHIRAVAN, Advocate (SR-34815[F] dated 17/11/2021)

C.R.P. (MD) No.1428 of 2021

15.11.2021

MGJ(07.12.2021) 3P 3C