



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.08.2021

Delivered on : 31.08.2021

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.R.P. (MD)No.423 of 2017

WEB COPY

P.Karuppiah

... Petitioner / Petitioner /
Plaintiff

Vs.

1.Dr.J.Amala Devi
through her power agent
S.K.Syed Ismail

2.Dr.J.Amala Devi
(R1 remaining exparte. Hence,
notice may be given up against R1)... Respondents / Respondents
/ Defendants

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 22.11.2016, passed by the Additional Subordinate Judge, Dindigul made in I.A.No.340 of 2016 in O.S.No.404 of 2010.

For Petitioner	: Mr.M.Siddharthan
For R2	: Mr.Y.Prakash
For R1	: Exparte vide E.B.

ORDER

This Civil Revision Petition is filed against the order, dated 22.11.2016, passed by the Additional Subordinate Judge, Dindigul made in I.A.No.340 of 2016 in O.S.No.404 of 2010.

2.The revision petitioner herein is the plaintiff in the original suit and the petitioner in the I.A. petition and the respondents herein are the defendants in the original suit and the respondents in the I.A. petition. The petitioner filed a suit in O.S.No.404 of 2010, for specific performance and for alternative prayer for damages and for permanent injunction. In the suit, the petitioner filed a petition in I.A.No.340 of 2016, for appointment of a Court Commissioner, to visit the suit property and to note down the physical features. That petition was dismissed by the trial Court. Against which, the petitioner has preferred this Civil Revision Petition.

3.Brief substance of the petition in I.A.No.340 of 2016, is as follows:

<https://hcservices.ecourts.gov.in/hcservices/> The first respondent, who is the power agent of the second respondent, entered into an agreement for sale with the petitioner



/ plaintiff, but, the first respondent was postponing the execution of the sale deed. A suit for specific performance was filed by the petitioner and the case is pending for cross examination of P.W.3. When the petitioner came home from Abroad, he was shocked to see more than 50 persons were engaged in construction work in the suit property. If the construction is put up, the petitioner will be constrained to seek for a remedy of mandatory injunction, which will result in considerable loss of time.

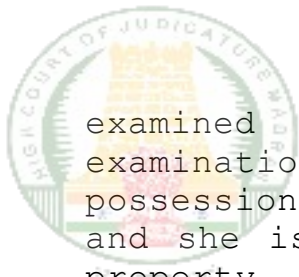
4. Brief substance of the counter filed by the second respondent in I.A.No.340 of 2016, is as follows:

The second respondent never executed any power deed in favour of the first respondent. The second respondent is not bound by the sale agreement and he is no way connected with any transaction that might have been taken place between the petitioner and the first respondent. The property belonged to the second respondent and she is having every right to construct a building in the property. The petitioner and the first respondent colluded together and they are trying to usurp the property of the second respondent. Only to drag on the proceedings, the petitioner has filed the petition.

5. After hearing both sides, the trial Court dismissed the I.A. petition. Against the same, the petitioner has approached this Court by way of this Civil Revision Petition.

6. On the side of the revision petitioner, it is stated that the Trial Court failed to consider that the second respondent is in possession and the second respondent has admitted the construction work that took place in the suit property and there is possibility of altering the nature of the property. The trial Court failed to consider that under Order - 26, Rule 9 of the Code of Civil Procedure, to elucidate any matter in dispute, a Commissioner can be appointed. If the property is allowed to be altered, there will be problem for the petitioner in the execution proceedings.

7. On the side of the revision respondents, it is stated that the petitioner / plaintiff claimed specific performance on the basis of a sale agreement said to have been executed by the first respondent as a Power Agent of the second respondent. The second respondent denied the execution of power deed in the written statement. The first respondent was not appointed as a Power Agent by the second respondent. The petitioner and the first respondent colluded together and forged a document. The second respondent never met the petitioner / plaintiff. Though temporary injunction was sought for by the petitioner / plaintiff, permanent injunction was granted by the Court. The case was taken up for trial, P.W.1 and P.W.2 were cross examined and P.W.3 was



examined in Chief and the case is pending for the cross examination of P.W.3. Admittedly, the second respondent is in a possession of the property and she is the owner of the property and she is having every right to put up construction in her own property. The main issue to be decided in the case is the validity of the power deed. The Commissioner Report will not be of any help to decide the main dispute in the case. The first respondent in his written statement has denied the execution of power deed and the execution of the sale agreement.

8.A perusal of the records reveals that the petitioner / plaintiff has filed a suit for specific performance and the petitioner / plaintiff has admitted that the suit property belonged to the second respondent. The petitioner / plaintiff claimed right over the property by way of a sale agreement said to have been executed by the first respondent, as the power agent of the second respondent. The first respondent has filed a written statement denying the execution of the power deed and the execution of the sale agreement. The second respondent has filed a written statement denying the execution of power deed and the sale agreement. So, the main matter to be decided in the original suit is regarding the execution of the power deed.

9. The petitioner has approached the trial Court for an injunction order. No interim injunction was granted by the trial Court in favour of the petitioner/ plaintiff. The allegation of the petitioner is that the second respondent is constructing a building in the suit property, thereby, changing the nature of the property. The second respondent has admitted that she is doing construction work in the property. Admittedly, some construction work is going on in the suit property. When the construction itself was admitted by the second respondent, there is no necessity for proving the construction by way of appointment of a Court Commissioner. Admitted fact need not be proved. The Commissioner report will be of no use to decide the main dispute between the parties.

10.In the above circumstances, there is nothing sufficient enough to interfere in the orders of the trial Court. Hence, this Civil Revision Petition is dismissed. No costs.

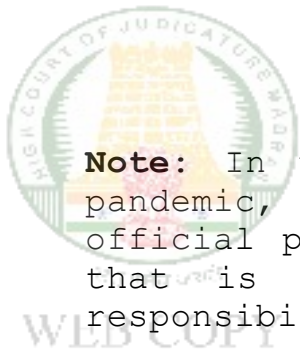
Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Additional Sub Judge,
Dindigul.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

C.R.P (MD) No.423 of 2017
31.08.2021

PS (CO)
SB(07.09.2021) 4P 4C