



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2022

CORAM :

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.1701 of 2020

and

C.M.P.No.10675 of 2020

V. Suresh

... Petitioner

Vs.

Vallabai John

... Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 10.01.2020, made in I.A. No.637 of 2019 in O.S. No.569 of 2008 on the file of the Principal District Munsif, Alandur.

For Petitioner : Mr. V.R. Kamalanathan

For Respondent : Mr. M.L. Ganesh

ORDER

This Civil Revision Petition is filed against the fair and decreetal orders dated 10.01.2020, made in I.A. No.637 of 2019 in



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY O.S.No.569 of 2008 on the file of the Principal District Munsif, Alandur.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places their ranks in the present petition would also be indicated.

3. The revision petitioner is the plaintiff in O.S. No.569/2008 on the file of the Principal District Munsif Court, Alandur. He filed the suit for a bare injunction restraining the defendant, Vallabai John, from interfering with his peaceful possession and enjoyment of the suit property morefully described in the plaint as a house site measuring 2880 sq. ft. bearing Plot No.1321/B, Ram Nagar South Layout, comprised in Survey No.133/6A 7A 1A of Madipakkam Village, Tambaram Taluk, Kancheepuram District, within the boundaries stated in the plaint schedule.

4. The defendant filed a written statement denying the title of the plaintiff and both the parties went for trial after settlement of issues. The evidence on the side of the plaintiff is closed and two witnesses were



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

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also examined on the side of the defendant. At that juncture, the defendant filed an application in I.A. No.637/2019 under Order XXVI Rule 9 r/w Section 151 CPC for appointment of an Advocate Commissioner to inspect the suit property and to measure the same with the help of a taluk surveyor. The plaintiff filed a counter and after full contest, the learned Principal District Munsif, Alandur allowed the said application vide her orders dated 10.01.2020 and appointed one Mr.P.Raghavan, Advocate, as an Advocate Commissioner to inspect the suit property and also to take measurements with the assistance of a taluk surveyor. Aggrieved over the same, the present Civil Revision Petition is filed by the plaintiff.

5. Heard Mr. V.R. Kamalanathan, learned counsel appearing for the revision petitioner and Mr. M.L. Ganesh, learned counsel appearing for the respondent.

6. Mr. V.R. Kamalanathan, learned counsel appearing for the revision petitioner contended that the suit is filed for the relief of a



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY

bare injunction and appointment of an Advocate Commissioner is totally unnecessary and an Advocate Commissioner cannot be appointed for localisation. In support of his above contention, he relied on the decision in ***Chintapatla Arvind Baby and Ors vs. K. Balakristamma and Ors*** in C.R.P. No.1827 of 1997 (High Court of Andhra Pradesh).

7. Per contra, Mr. M.L. Ganesh, learned counsel appearing for the respondent would contend that

- i. the plaintiff has mainly filed the suit for bare injunction on the basis of a registered sale deed dated 07.04.2004 executed by one Annakili Ammal represented by her Power Agent Mr.A.K.Chandran, in his favour.
- ii. The defendant also filed a suit in O.S. No.595/2007 (being tried simultaneously with O.S. No.569/2008) for a bare injunction against the said Power of Attorney holder A.K.Chandran and an ad-interim injunction was granted in the said suit.
- iii. The property of the plaintiff is situate in Sri Balaji Nagar Layout and not in Ram Nagar South.



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY

- iv. In the Power of Attorney executed by Annakili Ammal in favour of A.K. Chandran on 07.09.1998, there was no mention about Ram Nagar south layout. For the first time in the sale deed dated 07.04.2004 executed in favour of the plaintiff Ram Nagar South layout is mentioned.
- v. Annakili Ammal on 19.06.1963 sold her entire property in favour of one Dr.A. Parthasarathy Iyengar and therefore, she did not have any right over the suit property. In view of the same the Power of Attorney executed in the year 1998 in favour of A.K.Chandran cannot be sustained.
- vi. Dr. A. Parthasarathy Iyengar along with his son Vasudevan executed various sale deeds to the following persons.
1. In favour of G. Sulochana in respect of Plot No.295 in Sri Balaji Nagar layout (Ex.B10).
 2. In favour of Mrs. Prabha Stalin in respect of Plot No.A/295 in Sri Balaji Nagar layout (Ex.B11).
 3. In favour of Mrs.G. Mallika in respect of Plot No.293 in Sri Balaji Nagar layout (Ex.B12).



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY

8. The learned counsel for the respondent also relied on the decision of this Court in *A. Nagarajan vs. A. Madhanamukar* in C.R.P. Nos.782 and 783 of 1995 decided on 10.01.1996 and contended that orders such as summoning witnesses, discovering, production, inspection of documents, issue of commission, inspection of premises, fixing the date of hearing, admissibility of documents, relevancy of questions are all steps to be taken towards the final adjudication and not open to correct error or defect or irregularity by way of invoking a revisional jurisdiction. He would further contend that if any of the order on these aspects is bad in law, it is open to the parties to raise as one of the grounds against the final order. It is further submitted by him that when the defendant has questioned the title of the plaintiff, he has not amended the plaint seeking for larger relief of declaration of title and permanent injunction and that his vendor does not have any title to convey the suit property in his favour. He would therefore contend that the inspection of the suit property would actually reveal the real facts in question and the trial court has exercised its jurisdiction rightly which needs no interference by this



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COURT.

9. It is true that the plaintiff has filed the suit only for bare injunction and the plaintiff has to prove his possession over the suit property by way of adducing oral and documentary evidence. But in the instant case, the defendant has questioned the title of the plaintiff and as rightly contended by the learned counsel for the respondent/defendant, the plaintiff did not seek for a relief of declaration of his title to the suit property. Moreover, the present suit in O.S.No.569/2008 is being tried simultaneously with O.S. No.595/2007, which was filed by the present respondent/defendant against the Power of Attorney holder A.K.Chandran, who sold the property in favour of the plaintiff. An ad-interim injunction was granted in the said suit. The learned Principal District Munsif, Alandur, in her orders dated 10.01.2020, has observed that the plaintiff had purchased the suit property even without identifying the survey number and boundary descriptions and his property does not form part of Ram Nagar South layout and therefore, in order to ascertain the exact location of the suit property an appointment of an advocate commissioner is absolutely necessary. The defendant, even in his written



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

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statement had contended that the vendor of the plaintiff did not have title over the suit property and that it was sold in favour of one Parthasarathy Iyengar, who subsequently sold the same to various persons. According to the defendant he purchased Plot No.B/295, Sri Balaji Nagar, forming part of 0.123, Madipakkam Village, Saidapet Taluk, comprised in S.No.133/7, measuring an extent of 2850 sq. ft. from Dr. Parthasarathy Iyengar and Mr. S. Vasudevan through a registered sale deed registered as document No.2294/1994, S.R.O. Alandur. It is specifically averred in the written statement that when Annakili Ammal sold the entire extent of the property in favour of Parthasarathy Iyengar, she cannot execute a Power of Attorney during the year 1998 in favour of A.K.Chandran as she did not have any title to convey Plot No.1321-B (Western portion) in Ram Nagar South Layout, comprised in Survey No.133/6A 7A 1A forming part of Madipakkam Village, Tambaram Taluk, Kanchipuram District measuring 2880 sq. ft.

10. Thus it is seen from the rival submissions made by both the parties that there is a dispute with regard to the identity of the suit property and in order to ascertain the same, appointment of an Advocate



C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

WEB COPY

Commissioner is absolutely necessary for proper adjudication of the matter in issue between the parties. The trial court has rightly exercised its jurisdiction by appointing an Advocate Commissioner and the same does not warrant any interference by this Court. Accordingly the Civil Revision Petition is dismissed.

11. In the result,

- i. the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petition is also dismissed.
- ii. the fair and decreetal orders dated 10.01.2020, made in I.A. No.637 of 2019 in O.S. No.569 of 2008 on the file of the Principal District Munsif, Alandur, is upheld.
- iii. Since the suit is of the year 2008, the Principal District Munsif, Alandur, is directed to dispose of the same as expeditiously as possible after receiving report of the Advocate Commissioner.

28.11.2022

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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C.R.P.No.1701 of 2020
and C.M.P.No.10675 of 2020

R. HEMALATHA, J.

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To,

The Principal District Munsif, Alandur.

C.R.P.No.1701 of 2020
and
C.M.P.No.10675 of 2020

28.11.2022