



C.R.P.(PD).Nos.1892 and 1893 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[Reserved on : 21.02.2022]

[Pronounced on : 22.03.2022]

CORAM :

THE HON'BLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

C.R.P.(PD) Nos.1892 and 1893 of 2016

and

C.M.P.Nos.9883 and 9884 of 2016

V.Devaki

W/o.Saravanan

Door No.1/450-1, Palanigoundan Kattuvalavu

Pappampadi Village

Omalur Taluk

Salem District

... Petitioner in C.R.P.No.1892 of 2016

S.Elango

S/o.Late Sivaprakasam

Door No.1/452. Palanigoooundan Kattuvalavu

Pappampadi Village

Omalur Taluk

Salem District

... Petitioner in C.R.P.No.1893 of 2016

Vs.

1.S.Rajendran

S/o.Late Sadaiyan @ Vedi Gounder @ Sadaiyappa Gounder

2.P.Kausalya

W/o.S.Rajendran

3.R.Sasireka

1/10



C.R.P.(PD).Nos.1892 and 1893 of 2016

D/o.S.Rajendran

W/o.Prasad

WEB COPY

4.Palanisamy

S/o.Aanai Gounder

... Respondents in both C.R.Ps

COMMON PRAYER: These Petitions are filed under Article 227 of the Constitution of India praying to set aside the Fair and Decreetal Order passed by the Subordinate Court at Mettur, dated 07.03.2016 in I.A.Nos.115 and 116 of 2015 in O.S.Nos.8 and 9 of 2013.

For Petitioner : Mr.P.Valliappan
in both C.R.Ps.

For Respondents : No Appearance

COMMON ORDER

These Civil Revision Petitions are filed challenging the Fair and Decreetal Order passed by the learned Subordinate Judge, Mettur in I.A.Nos.115 and 116 of 2015 in O.S.Nos.8 and 9 of 2013 vide order dated 07.03.2016.

2.The Revision Petitioners are the plaintiffs in the suit in O.S.No.8 and 9 of 2013 filed for declaration, declaring that the plaintiffs are the



C.R.P.(PD).Nos.1892 and 1893 of 2016

absolute owners of the suit properties and for a consequential decree, declaring that the sale deed executed by the defendants 1 and 3 in favour of the 2nd defendant dated 07.09.2011 registered in Document No.4995 of 2011 on the file of Sub-Registrar Office, Thamangalam is null and void and for permanent injunction interdicting the defendants and their agents from in any way creating any document in respect of the suit properties.

3.The Revision Petitioners / plaintiffs filed the said Interlocutory Applications in I.A.Nos.115 and 116 of 2015 under Order XXVI Rule 9 of Civil Procedure Code for appointment of Advocate Commissioner to note down the physical features in the suit properties such as existing buildings, door numbers, service connections, to measure the suit property with the help of the Village Administrative Officer, Pappampadi Village along with revenue records and to file a report with rough plan.

4.Learned counsel appearing for the Revision Petitioners submitted that the respondents / defendants have suppressed the exclusive and absolute possession in the suit property by the plaintiffs and the existence of terrace buildings, service connections in the suit properties have been



C.R.P.(PD).Nos.1892 and 1893 of 2016

collusively manipulated and forged a sale deed in between them in respect of suit property and other properties as if they are vacant lands. He further submitted that even in their written statement, the respondents / defendants have falsely denied the averments made in the plaint regarding the existence of terrace building, service connections in the suit property.

5.Learned counsel further added that the above said suits are filed for the relief of declaration and permanent injunction, there were allegations and counter allegations regarding the existence of terrace buildings, service connections in the suit property by both parties in the suit in order to put forth the exact and real topography of the suit property before the trial Court and in order to arrive at a fair conclusion about the suit property, the appointment of Advocate Commissioner is of absolute necessity. The Commissioner's report and the plan will certainly elucidate, substantiate and put forth the exact and real features in the suit property before the trial Court. The prayer in the application is extracted hereunder:

“For the reasons stated in the accompanying affidavit, the petitioner / plaintiff most humbly prays that this Honourable Court may kindly be pleased to pass an order appointing a commissioner of



WEB COPY



C.R.P.(PD).Nos.1892 and 1893 of 2016

this Honourable Court to make a local inspection of the petition mentioned property in the presence and with the assistance of the Village Administrative Officer, Pappampadi Village along with revenue records and note down the physical features in the suit property such as existing buildings, door numbers, service connections and file a report with rough plan and pass such other suitable orders and thus render justice.

6.Learned counsel further contended that no objection was raised by the respondents / defendants, no counter was filed in the Interlocutory Applications filed in I.A.No.115 and 116 of 2015 in O.S.Nos.8 and 9 of 2013 and they remained exparte in both the applications. He added that in the interest of justice and for the proper adjudication of the subject matter of the suit, the appointment of Advocate Commissioner is necessary. Further, the Revision Petitioners / Plaintiffs have no intention to gather evidence through Advocate Commissioner, since the suit is in trial stage, the respondents will not be put to any loss or injury if the Advocate Commissioner is appointed, as in the written statement filed by the respondents / defendants, it has been categorically mentioned that the terrace buildings are not in existence.



C.R.P.(PD).Nos.1892 and 1893 of 2016

7. Heard the learned counsel appearing for the Revision Petitioners.

No representation on behalf of the respondents.

8. It can be seen from the order passed by the trial Court where it has been observed that in the final decree application there is no mention about the filing of application for appointment of Advocate Commissioner, but, however, in the plaint, the Revision Petitioners / plaintiffs have stated about the appointment of Advocate Commissioner in the final decree application in I.A.No.59 of 2003 on the file of the Principal Sub Judge, Salem and the trial Court based on the above said facts and the averments made in the plaint has come to a conclusion that the application for appointment of Advocate Commissioner is only to collect evidence on the side of the plaintiffs.

9. The above observations made by the trial Court is not correct and the same is unsustainable for the reasons that the Revision Petitioners themselves have averred in the plaint filed in support of the Suits, the above fact clearly establishes that the Revision Petitioner do not want to suppress any fact before the Court.

6/10



WEB COPY

10.It is further observed in the order passed by the trial Court that in the final decree application filed in I.A.No.59 of 2003, on the file of the Principal Sub Judge, Salem, the Advocate Commissioner was appointed and he has inspected the suit property on 12.07.2003 and 02.08.2003 and filed a report with plan. In the above said report, there is no reference with regard to how many buildings are there, the nature of the buildings and the door numbers existed in the Survey No.64/5. There are also vital discrepancies regarding the sub-division of Survey No64/5 in the Advocate Commissioner's report. Based on the preliminary decree passed in O.S.No.319 of 1976 by the learned Principal Sub Judge, Salem, a final decree application in I.A.No.59 of 2003 was filed and the final decree was passed on 21.11.2003.

11.The Revision Petitioners / plaintiffs have fairly submitted without suppressing the fact that the Advocate Commissioner was already appointed in the final decree application filed in I.A.No.59 of 2003 on the file of the learned Principal Sub Judge, Salem, shows their bonafide intention in filing the application for appointment of Advocate Commissioner is only for the

7/10



C.R.P.(PD).Nos.1892 and 1893 of 2016

reason stated in the prayer and not for collecting evidence on the side of the plaintiffs as observed by the trial Court.

12.On a perusal of the records placed before this Court, it is crystal clear and evident that the applications in I.A.Nos.115 and 116 of 2015 in O.S.Nos.8 and 9 of 2013 are filed under Order XXVI Rule 9 C.P.C. for appointment of Advocate Commissioner is to note down the physical features and to measure the buildings with the help of the Village Administrative Officer and not for collecting evidence. The respondents / defendants did not file their objections / counters affidavit and remained exparte in the applications. It is also clear that the Revision Petitioners / plaintiffs have filed the above applications for appointment of Advocate Commissioner is only to put forth the real topography of the suit property.

13.The Revision Petitioners have also filed the original documents viz. Sale deed, House tax payment receipts, Electricity Board payment receipts, computer patta along with the plaint itself clearly indicates that the terrace house is in existence and the intention of the petitioners to file the application for appointment of the Advocate Commissioner is only for the

8/10



C.R.P.(PD).Nos.1892 and 1893 of 2016

prayer stated above and not for collecting evidence as observed by the trial Court.

14.The trial Court failed to take into consideration the above facts of the case while dismissing the Interlocutory Applications filed by the Revision Petitioners / plaintiffs for appointment of Advocate Commissioner.

15.Considering the above facts and circumstances of the case, the order passed by the learned Subordinate Judge, Mettur in I.A.Nos.115 and 116 of 2015 in O.S.Nos.8 and 9 of 2013 is liable to be set aside and the same is set aside.

16.In the result, the Civil Revision Petitions stand allowed. Consequently, the connected miscellaneous petitions are closed. No costs.

22.03.2022

kas

Index : yes / no

Speaking order (or) Non speaking order

9/10



WEB COPY



C.R.P.(PD).Nos.1892 and 1893 of 2016

J.SATHYA NARAYANA PRASAD, J.

kas

To

The Subordinate Court
Mettur

Pre-Delivery Order in
C.R.P.(PD) Nos.1892 & 1893 of 2016
& C.M.P.Nos.9883 & 9884 of 2016

22.03.2022