



CRP(PD).No.2481 of 2016 and
C.M.P.No.10405 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE Mrs.JUSTICE T.V.THAMILSELVI

CRP(PD).No.2481 of 2016
and
C.M.P.No.10405 of 2017

1.R.Kirubaraj
2.Revathi Kirubaraj

.. Petitioner

Vs.

S.Sheik Mohideen

.. Respondent

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order dated 17.02.2016 passed in I.A.No.119 of 2015 in O.S.No.95 of 2012 on the file of the Principal District Munsif Court at Alandur, Chennai.

For Petitioners : Mr.G.K.R.Pandiyan

For Respondent : Mr.J.Ravi Kumar



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ORDER

Challenging the order passed in I.A.No.119 of 2015 in O.S.No.95 of 2012 on the file of Principal District Munsif Court, Alandur, the plaintiffs preferred this revision.

2. Originally O.S.No.95 of 2012 was filed by the revision petitioners / plaintiffs for the relief of permanent injunction not to cause interference in their enjoyment of Plot No.239 as described in the plaint schedule. The defendant contested the suit by filing the written statement stating that no such Plot No.239 exists on the said layout. On the other hand, it is stated that the this defendant is the owner of the Plot No.182 with 4 boundaries, which he purchased for valid consideration from his vendors and in possession and enjoyment of the property in 2006. Thus, the defendant, denied the existence of such suit Plot no.239. Thereafter, the plaintiffs filed I.A.No.119 of 2015 to appoint an Advocate Commissioner, to identify the suit property with the help of Taluk surveyor and to note down the physical features in the property. In the said appication, the



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plaintiffs contended that his vendor, Natarajan purchased the property from one Sesha Sayanam on 08.10.1999 from that date he enjoyed the property as absolute owner in plot no.239 but the same was denied by the defendant. Hence, to identify the property, Commissioner needs to be appointed. The said application was strongly opposed by the defendant stating that no such plot no.239 is exists on ground, in fact Plot No.182 belongs to defendant and he is in possession and enjoyment of Plot No.182 and also submits that in the entire plan 216 plot exists and there is no such Plot No.239.

3. Considering both the submissions, the trial Judge held that the suit was filed for permanent injunction in respect of Plot No.239 with an extent of 2400 sq.ft. Since the defendant denied the plaintiffs' right, the appointment of Commissioner will not help the plaintiffs to prove their title over the property. Accordingly, trial Court dismissed the application on the ground that report of the Commissioner is unwarranted one. Challenging the said finding, the plaintiffs preferred this revision before this Court.



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4. During the pendency of revision proceedings, this Court suggested for appointment of the Commissioner. Accordingly, a Commissioner was appointed on 21.11.2016, for the purpose of identifying the property as per the document relied by the petitioners in Document No.286 of 1998, annexed with sketch showing the plot sold to him. To that purpose only a Commissioner was appointed. As per the order of this Court, Commissioner visited the property and measured it along with Surveyor. On 04.04.2017, Commissioner submitted the report. As per the direction of this Court, the Commissioner along with the Taluk Surveyor measured and inspected the property as per the document No.286 of 1998 and based on that the Commissioner submits the report that the revenue records shows Plot No.182 is surrounded with 3 Plots and on the northern side there is a 40 feet road. To that effect, he identified the property and submitted the report. For that the revision petitioner again raised objection and submits that with regard to identification of the property, he needs more particulars in the report and again another commissioner was appointed on 23.08.2017, but the Commissioner did not inspect the property as petitioner not cooperated,



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returned the warrant. The 3rd Commissioner was appointed on 24.07.2019, but he did not inspect nor the petitioner took efforts.

5. Now, when the matter is taken up today, the Commissioner appears before the Court and submits that he is not inclined to proceed and want to return the warrant. The fact reveals that though this Court directed the Commissioner to note down the physical features of the suit property, as requested by petitioners, from July 2019, no steps were taken on the side of the petitioner, which clearly shows that he is not inclined to proceed with the Commissioner and drag on the proceedings.

6. On perusal of the records, it reveals that the plaintiffs' approached the Court for permanent injunction in respect of the Plot No.239 by contending that he purchased the suit plot in the year 1999. As per the contention of the defendant, it reveals that he purchased the property for valuable consideration in the year 2006 with regard to Plot No.182. On bare perusal of the plan attached to the document belongs to the vendor of the plaintiffs, claiming Plot No.182 which is mentioned as 239 in his document.



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7. As per the Commissioner's Report also Plot No.182 is identified as 239. In fact, both the Commissioner as well as the Surveyor visited the property with the aid of the document belongs to the vendor of the plaintiffs. They inspected the property, surveyed and measured and submitted the report at the earliest point of time, as per the direction of this Court, as per the report of the Commissioner, he identified the Plot No.182 and no such Plot No.239 on ground as per revenue record. The object of the application filed by the plaintiffs before the trial Court is to appoint a Commissioner to note down the physical feature and also inspect and identify the property with the help of the surveyor. That object was fulfilled by the order of this Court and a commissioner was appointed and submitted a report along with Surveyor Report. Therefore, though the trial Court did not permit the plaintiffs to inspect the property with the help of Commissioner, this Court already appointed a Commissioner for the same purpose, for which he approached this Court. Therefore, the Commissioner filed report dated 04.04.2017 is taken on record. The report of the Commissioner at the request of the petitioners by this Court, clearly indicates that the object of the revision was satisfied.



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8. But the learned counsel for the petitioner would contend that he is not satisfied with the Commissioner's report so that only he was again permitted to take Commissioner to revisit the property. As discussed above, this Court is not a trial Court. Even, if any direction was given on earlier occasion, the same was not complied by the petitioners. The Commissioner also returned the warrant.

9. Therefore, the revision is disposed of and the final report filed by the Advocate Commissioner dated 04.04.2017 is ordered to be sent to the trial Court and the trial Court can proceed with the trial. Liberty is given to the plaintiffs to raise the objection to the Commissioner's Report, if any and the trial Court is directed to dispose the matter within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

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T.V.THAMILSELVI, J.

AT

To
The Principal District Munsif Court, Alandur,
Chennai.

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