

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

C.R.P.No. 2226 of 2019

and

CMP.No.14417 of 2019

Chinnapaiyan
Petitioner

..

Versus

1. Chellan
2. Chandira

...Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 13.03.2019 made in I.A.No.815 of 2018 in O.S.No.55 of 2017 on the file of Principal District Munsif Court, Cheyyar, Thiruvannamalai.

For Petitioner : Mr. P. Mani

For Respondents : Mr. K.G. Senthil Kumar

ORDER

This Civil Revision Petition has been filed by the petitioner/defendant seeking to set aside the fair and decretal order dated 13.03.2019 made in I.A.No.815 of 2018 in O.S.No.55 of 2017 on the file of Principal District Munsif Court, Cheyyar, Thiruvannamalai.

2. The petitioner herein is the defendant and the respondents herein are plaintiffs in O.S. No.55 of 2017.

3. The case of the petitioner is that the respondents/plaintiffs filed a suit in O.S.No.55 of 2017 before the Principal District Munsif Court, Cheyyar, Thiruvannamalai seeking for declaration and permanent injunction and other consequential relief. During the pendency of the suit, the plaintiffs/respondents herein filed an I.A.No.815 of 2018 under Order 26, Rule 9 of the Code of Civil Procedure, to appoint an Advocate Commissioner to inspect the suit property, to note down the physical features of the suit property and to file a report along with sketch. After hearing both sides and perusing the records, the Court below allowed the

petition by its order dated 13.03.2019. Being aggrieved by the aforesaid order, the defendant/petitioner herein has filed the present Civil Revision Petition to set aside the same.

4. The learned counsel for the petitioner contended that the Court below ought to have dismissed the application for appointment of Commissioner as it is not possible to measure the properties allotted to the petitioner and the respondents herein. When the Commissioner already appointed in the appeal in A.S. No.15 of 2013 filed by the petitioner herein against the order dated 08.11.2012 in O.S. No.66 of 2010 on the file of the District Munsif Court, Cheyyar, Thiruvannamalai, could not identify and measure the same properties for want of correct boundaries as per the exchange deed relied upon by the parties. While being so, the application in I.A. No.815 of 2018 in O.S. No.55 of 2017 for appointment of Advocate Commissioner ought to have been dismissed by the Court below but, it has erroneously been allowed by order dated 13.03.2019. Hence, he seeks to set aside the aforesaid order.

5. On the other hand, the learned counsel of the respondents

contended that despite the earlier Advocate Commissioner appointed in A.S. No.15 of 2013 could not find the boundaries in the suit properties as per the exchange deed wherein the schedule of property has not been mentioned. But, after fixing the boundaries of the properties belonged to both parties by way of exchange deed, the respondents/plaintiffs have filed I.A No.815 of 2018 in O.S. No.55 of 2017. While the plaintiffs/respondents herein were allotted the suit property and they have right title and interest over the suit schedule property for which purpose only O.S. No.55 of 2017 has been filed seeking for declaration and permanent injunction against the defendant/petitioner herein. It is the duty of the Trial Court to grant a relief to the plaintiffs/respondents herein and resolve the dispute arose between the parties. Therefore, it is necessary to identify and measure the boundaries in the suit property of the petitioner and respondents as per the deed relied by them. Hence, the Court below has rightly allowed the application.

6. Heard the learned counsel for the petitioner and the learned counsel for the respondents as well as perused the materials available on record.

7. Having considered the facts and circumstances of the case and submissions of the learned counsel on either side, it is seen that the respondents/plaintiffs filed a suit in O.S.No.55 of 2017 before the Principal District Munsif Court, Cheyyar, Thiruvannamalai, for declaration and permanent injunction against the defendant/petitioner herein. Pending the suit, the plaintiffs/respondents herein filed an I.A.No.815 of 2017 under Order 26, Rule 9 of CPC., to appoint an Advocate Commissioner to inspect the suit property, to note down the physical features of the suit property and to file a report along with sketch. While the suit arose in view of the dispute in the boundaries of the suit properties between both parties, the same can be resolved only by identifying the boundaries of the suit property as per exchange deed. Hence, having considered the interest of both parties, the Trial Court has rightly allowed the application and hence, this Court is not inclined to interfere with the order dated 13.03.2019 passed by the Trial Court. The Advocate Commissioner is hereby directed to measure the properties and fix the boundaries thereon with the help of qualified surveyor as per the exchange deed relied by the petitioner and respondents herein in their presence and file report before the Trial Court accordingly. However, the

T.V.THAMILSELVI, J.

Lbm

petitioner herein is given liberty to raise all his objection whatever before the Trial Court by filing reply on the fixation of boundaries and report of the Advocate Commissioner.

7. With the aforesaid observation, this Civil Revision Petition is disposed of. No Costs. Consequently, connected miscellaneous petition is closed if any.

28.09.2022

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Index : Yes/No

Speaking Order : Yes/No

To

1. The Principal District Munsif Court,
Cheyyar, Thiruvannamalai.
2. The Section Officer, V.R.Section
High Court, Madras.

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