



WEB COPY



C.R.P.No.3229 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.No.3229 of 2022
and C.M.P.No.17148 of 2022

S.U.Muruganantham

.. Petitioner

Vs.

1.S.Selvamani

2.S.Selvi

3.A.Ethiya

S.V.Shankar (Died)

4.S.Komalavalli

5.S.Jagadeeshwari

6.S.Yamuna

7.S.Nalini

8.S.Bhoopalan

9.Suresh

10.Dilipkumar (Minor)

Rep. by his brother Suresh

.. Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, pleaded to set aside the fair and final orders dated 02.08.2022 passed in I.A.No.137 of 2020 in O.S.No.56 of 2009 on the file of Additional District Munsif Court at Alandur.

For Petitioners : M/s.R.Nalliyappan

For Respondent : No Appearance

ORDER

This Civil Revision Petition has been filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner, seeking appointment of an Advocate Commissioner to identify and measure the suit property with the help of the Taluk Surveyor and also to note down the physical features of the suit property.

2. The petitioner herein filed a suit for declaration that the settlement deed 05.01.2007 executed by the 1st defendant in favour of the 2nd defendant is null and void, not binding upon the plaintiff and also for permanent injunction restraining the respondents from alienating the suit property.



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3. The trial in the suit was already over and the matter is posted for arguments.

At this stage, the revision petitioner/plaintiff filed an application seeking appointment of an Advocate Commissioner to note down the physical feature and measure the property with the help of Taluk Surveyor. The said application was dismissed by the Court below on the ground that there is no dispute with regard to the identification of the suit property and hence the appointment of an Advocate Commissioner is unnecessary. Aggrieved by the same, the revision petitioner has come up by way of this revision .

4. The learned counsel for the petitioner submitted that the 1st respondent herein sold the suit property to 4th respondent on 25.10.2005 and thereafter revision petitioner purchased it from 4th respondent on 30.08.2006 and he has been possession and enjoyment of the suit property and thereafter in order to defeat the right of the revision petitioner, the 1st respondent executed the settlement deed in favour of the 2nd respondent in respect of the very same property which he sold to the 4th respondent as early as 2005. This compelled the revision petitioner to file the above suit for a declaration that the settlement deed executed to 1st defendant is not binding upon him and for consequential order, restraining the respondent from alienating the suit property. It is the argument of the learned counsel for the



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petitioner that the respondents are colluded together and they have tried to defeat the rights of the petitioner and hence the Advocate Commissioner shall be appointed to note down the physical features of the suit property.

5. I am unable to accept the argument made by the learned counsel for the petitioner. The core issue to be decided is the inducement of the 1st respondent to settle the property to 2nd respondent, subsequent to the sale deed dated 25.10.2005 in favour of the 4th respondent and the sale deed dated 30.08.2006 in favour the revision petitioner. The main issue in the suit has to be decided based on the documents and commission for local inspection to note down the physical features is not not all necessary, as rightly observed by the Court below. There is no allegation about the difficulty in identification of the suit property. In the absence of any controversy with regard to the identification of the suit property, the prayer sought for by the revision petitioner cannot be accepted. I do not find any illegality and irregularity in the order passed by the Court below. Hence, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022

Index: Yes/ No

Speaking Order / Non-Speaking Order

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To
The Additional District Munsif Court
Alandur.

S.SOUNTHAR, J.

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