



C.R.P.No.3052 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 18.08.2022

Delivered On : 14.10.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.R.P.No.3052 of 2021

and

C.M.P.No.21568 of 2021

Pathi Muthu

... Petitioner

-VS-

Shamima Umar

... Respondent

PRAYER: Civil Revision Petition had been filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 30.11.2021 passed in I.A.No.3 of 2021 in O.S.No.134 of 2020 by the learned III Additional District Court at Poonamallee.

For Petitioner : Mr.R.Mukundan
For Respondent : Mr.N.Sivaprakash

ORDER

This Civil Revision Petition had been filed seeking to set aside the fair and final order dated 30.11.2021 passed in I.A.No.3 of 2021 in O.S.No.134 of 2020 on the file of the learned III Additional District and Sessions Judge at Poonamallee.



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2.It is the contention of the learned Counsel for the Petitioner that the Petitioner is the Defendant in O.S.No.134 of 2020. The Plaintiff Mrs.Shamima Umar is none other than the sister of the Petitioner. It is the contention of the learned Counsel for the Petitioner that the mother of the Plaintiff and Defendant had executed a settlement deed whereby the properties in Survey No.22/1 at Adayalampattu Village was settled by the mother of the Plaintiff and Defendant vide Document No.988/2012 dated 09.05.2021. Subsequently, the National Highways had acquired a portion of the land from both the Petitioner and Respondent/Plaintiff and Defendant for road widening project of the National Highways. While so, without impleading the National Highways, the Respondent in this Civil Revision Petition as Plaintiff in the suit had filed O.S.No.134 of 2020 seeking the relief of declaration that the Plaintiff is the owner of the property in schedule 'A' by virtue of settlement deed bearing Doc. No.988/2012; mandatory injunction against the first Defendant to remove all the encroachment in schedule 'B' property and also to remove the Defendants 2 to 4 from schedule 'C' and 'D' properties occupied by them as tenants and



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also to grant permanent injunction restraining the first Defendant, her men, agents or any one on behalf of her from putting up any unauthorised construction over the land described in 'E' schedule and for costs.

3.It is the the further contention of the learned Counsel for the Petitioner that after the land acquisition proceedings had been initiated, the suit had been filed suppressing those facts against the Defendant who is the Petitioner in Civil Revision Petition. It is the further contention of the learned Counsel for the Petitioner that I.A. No.3 of 2021 in O.S.No.134 of 2020 was filed seeking appointment of Advocate Commissioner to measure the properties and to note down the physical features of the property and to report to the learned III Additional District and Session Judge, Poonamallee regarding the encroachment. It is also the further submission of the learned Counsel for the Petitioner that the objection filed by the Defendant No.1/the Petitioner herein as Respondent No.1 in I.A.No.3 of 2021 in O.S.No.134 of 2020 was not at all taken note of, particularly, the fact that the National Highways Authority and the State Authorities were not impleaded as proper and necessary parties in the suit. When that be the case, the Civil Court



cannot consider the conducting of roving enquiry by appointing Advocate Commissioner to note down the physical features and measure the properties. Ignoring the contention of the Petitioner herein as Respondent in the said I.A., the learned III Additional District Judge, Poonamallee had appointed an Advocate Commissioner. Aggrieved by the same, the Petitioner/Defendant No.1 had filed this Civil Revision Petition to set aside the order on the ground that when the suit itself is not maintainable, the appointment of Advocate Commissioner to make a local inspection and to conduct a roving enquiry which is not permissible in law.

4. In support of his contention, the learned Counsel for the Petitioner relied on the reported ruling of this Court in **2002 (3) CTC 748 [Devadoss -vs- A.Duraisingh]** wherein it has been observed as under:

“8. The learned counsel for the revision petitioner also relied on the case in Gopal Chettiar (deceased) and 3 Ors. v. P.A.A. Sahula Hameed and Anr., 1998 (3) LW 773 that the appointment of a Commissioner cannot be sought for collecting evidence or for any other materials. It has also been held in the case of Malaya Gounder and Ors. v. Palanisamy and Ors., 1 MLJ 626 that the Court cannot appoint any Advocate Commissioner to find out the physical possession of the parties. The principles in these decision are applicable to the case on hand. Now in the present case also, the plaintiffs sought the appointment of an Advocate Commissioner. Only for the purpose of making a roving enquiry with respect to the



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person in the house and also whether they have got cable connection and from whom they have got the connection. The Advocate Commissioner cannot be used for such fact finding purposes and as such, the order passed by the Court below is not sustainable under law. It is always open to the decree holder to examine the concerned persons as witnesses and prove as to how, and in what manner they got the cable connection. Hence the point is answered accordingly.”

5.The learned Counsel for the Respondent disputed the submission of the learned Counsel for the Petitioner stating that the Respondent had filed the suit with a specific plea that 3300 sq. ft. had been encroached by the Defendants and super structures had been put up. The Respondent has no other option than to move the Court. There is no impediment to consider the appointment of Advocate Commissioner and to proceed with the trial. Also, it is the submission of the learned Counsel for the Respondent that during enquiry no documents were marked. Therefore, the order passed by the learned III Additional District Judge, Poonamallee, does not warrant any interference and this Civil Revision Petition may be dismissed.

6.On consideration of the rival submissions and on perusal of the documents filed along with this Petition, it is found that the land acquisition proceedings/notification had been annexed wherein Survey No.22/1B of



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Adayalampattu village was mentioned. When that be the case, what was the extent of land acquired by the National Highways are to be considered.

When the land acquired by the National Highways and compensation is granted either to the Plaintiff or Defendants, proceeding with the suit in O.S.No.134 of 2020 by the learned III Additional District Judge, Poonamallee, will be an exercise in futility. It is also to be considered, once the land acquisition proceedings had commenced, the Civil Court has no jurisdiction to entertain the suit concerning the property that is the subject matter of land acquisition. Therefore, the objection by the Defendants in the suit/Respondents in the I.A.No.3 of 2021 is justified. The learned III Additional District Judge, Ponamallee, appointing an Advocate Commissioner in the suit which itself is not maintainable, is an exercise in futility. The reliance placed by the learned Counsel for the Petitioner in **2002 (3) CTC 748 [Devadoss -vs- A.Duraisingh]** is found acceptable to the facts of this case.

In the light of the above discussion, this Civil Revision Petition is to be allowed allowed.



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WEB COPY In the result, this **Civil Revision Petition is allowed.**

The order dated 30.11.2021 passed in I.A.No.3 of 2021 in O.S.No.134 of 2020 by the learned III Additional District Judge at Poonamallee is set aside. The suit in O.S.No.134 of 2020 also is struck off from the file of the learned III Additional District Judge at Poonamallee, as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.

14.10.2022

SRM

Index : Yes / No

Internet : Yes / No

To

The III Additional District and Sessions Court,
Tiruvallur at Poonamallee.



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SATHI KUMAR SUKUMARA KURUP., J.

SRM

**Pre-Delivery Order made in
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14.10.2022