



C.R.P. (PD) No.878 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.01.2022

Delivered on : 14.03.2022

CORAM :

THE HONOURABLE MRS. JUSTICE S. KANNAMMAL

C.R.P. (PD) No.878 of 2017

and

C.M.P.No.4284 of 2017

Raama. Radhakrishnan

... Revision Petitioner

Vs.

V.P.Radhakrishnan

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order, dated 28.03.2016 in I.A.No.305 of 2016 in O.S.No.259 of 2015 on the file of the District Munsif Court, Panruti.

For Petitioner : Mr.S.Mukunthan Narayanan
for M/s.Sarvabhauman Associates

For Respondent : No appearance



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ORDER

This Civil Revision Petition has been filed against the order, dated 28.03.2016, in I.A.No.305 of 2016 in O.S.No.259 of 2015, passed by the District Munsif, Panruti, allowing the application for appointment of an Advocate Commissioner.

2.For the sake of convenience, the revision petitioner and the respondent shall hereinafter be referred to as “defendant” and “plaintiff” respectively.

3.It is the case of the plaintiff that the plaintiff's maternal grandmother Anjalai Ammal is the owner of the suit property, which is a land measuring 0.90 cents, and she was in possession and enjoyment of the property. After her demise, the plaintiff, being her legal heir, is in possession and enjoyment of the suit property. It is the further case of the plaintiff that, on 20.07.2015, he came to know about the alleged Exchange Deed, dated 17.08.1943, registered vide Doc.No.2009 of 1943, entered into between the said Anjalai Ammal and one Krishna Reddiyar, who is the



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grandfather of the defendant, to the effect that the suit property (“A” Schedule Property as in the Exchange Deed) was conveyed to the said Krishna Reddiyar and in turn, the said Krishna Reddiyar has conveyed his land to an extent of 1.14 acres (“B” Schedule Property as in the Exchange Deed) to Anjalai Ammal. The plaintiff, by completely denying the said Exchange Deed, has further stated that the defendant attempted to interfere with the possession of the plaintiff in the suit property (“A” Schedule Property) on 06.08.2015. Hence, the plaintiff filed the suit against the defendant for injunction and for declaration of Exchange Deed, dated 17.08.1943 registered as Doc.No.2009 of 1943, as null and void.

4.The defendant filed his written statement and took a stand that, by the Exchange Deed dated 17.08.1943, the said Anjalai Ammal conveyed the suit property (“A” Schedule Property as in the Exchange Deed) to his grandfather, Krishna Reddiyar, and he in turn, conveyed his land to an extent of 1.14 acres (“B” Schedule Property as in the Exchange Deed) to Anjalai Ammal, after which, the respective parties are in possession and enjoyment of their properties. It is the further case of the defendant that, after the demise of his grandfather, he is in possession and enjoyment of the



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“A” Schedule Property (suit property). The defendant has further averred that, even as on date, the patta in respect of the “B” Schedule Property, which was conveyed in favour of the said Anajalai Ammal by his grandfather, stands in the name of Anjalai Ammal.

5.While so, the plaintiff, by taking a stand that the “B” Schedule Property, which was conveyed in favour of the grandmother of the plaintiff, Anjalai Ammal, does not exist at all, filed the impugned application under Order XXVI Rule 9 r/w. Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner to measure and determine the nature of “A” and “B” Schedule Properties and to prepare a rough sketch of the same. It is further stated in the affidavit filed in support of the impugned application that, only by appointing an Advocate Commissioner to measure and determine the nature of the “A” and “B” Schedule Properties, the plaintiff would be able to establish his case.

6.The defendant resisted the said application by stating that the “B” Schedule Property is not the subject matter of the present suit. The defendant further stated that he is in possession of the suit property (“A”



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Schedule Property) and the plaintiff along with his brother tried to create disturbance in his adjacent property, hence, to avoid any trouble from the plaintiff, the defendant requested the Tahsildar, Panruti, to demarcate the boundaries of the suit property (“A” Schedule Property) with the help of a surveyor; the plaintiff was put on notice regarding the same; on 06.08.2015, the suit property (“A” Schedule Property) was surveyed in the presence of the plaintiff, Station House Officer, Nellikuppam, Village Administrative Officer, P.N. Palayam, Inspector, HR&CE Department; the plaintiff did not raise any objection, however, refused to sign the surveyor's report. The defendant has further stated that the said Anjalai Ammal has mortgaged the “B” Schedule Property vide Mortgage Deed, dated 11.04.1959, registered as Doc.No.584 of 1959, and furnished as security to the Sub-Court, Cuddalore.

7.The said application for appointment of Advocate Commissioner was allowed by the trial Court, by order dated 28.03.2016.

8.Challenging the said order dated 28.03.2016, the defendant has filed the present Civil Revision Petition before this Court.



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9.The learned counsel for the revision petitioner/defendant submitted that the suit property is “A” Schedule Property, whereas, in the impugned application, a new property is introduced. The learned counsel further submitted that there is no necessity to measure and determine the nature of “A” and “B” Schedule Properties, which is not necessary to decide the issues in the suit. He further submitted that the suit property (“A” Schedule Property) has already been surveyed and measured by the Tahsildar through a surveyor on 06.08.2015, even in the presence of the plaintiff. Further, the patta in respect of the “B” Schedule Property still stands in the name of the said Anjalai Ammal and she has mortgaged the “B” Schedule Property by a registered mortgage deed, which proves the falsity of the case of the plaintiff. Therefore, the learned counsel prayed for setting aside the order allowing the impugned application.

10.Heard the learned counsel for the petitioner/defendant. Though the case was listed on 24.01.2022 under the caption “For orders”, there was no representation on behalf of the respondent/plaintiff to advance his arguments. Hence, this Court, after perusal of the entire materials available on record, is inclined to pass orders on merits.



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11.The suit is for injunction and declaration of the Exchange Deed as null and void. Admittedly, the trial has not yet commenced. At this juncture, the impugned application has been filed by the plaintiff for appointment of an Advocate Commissioner to measure and determine the nature of “A” and “B” Schedule Properties as mentioned in the said Exchange Deed. On a perusal of the impugned order passed by the trial Court, it is seen that the trial Court has allowed the application for the purpose of affording an opportunity to the plaintiff to prove his case.

12.The question that arises for consideration is whether the trial Court was right in affording an opportunity to the plaintiff by appointing an Advocate Commissioner.

13.Order XXVI Rule 9 of CPC reads as follows :

“9.Commissions to make local investigations.-- In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount of any mesne profits or damages or annual net



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profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court :

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules.”

14. At the risk of repetition, the plaintiff has filed the impugned application to appoint an Advocate Commissioner to measure and determine the nature of “A” and “B” Schedule Properties as mentioned in the Exchange Deed in question. On a reading of the pleadings, it is clear that the real dispute is only with regard to the execution of the Exchange Deed dated 17.08.1943. The plaintiff claims the document to be a forged one, which is disputed by the defendant. In the impugned application, the plaintiff takes a categorical stand that one of the properties exchanged, i.e. “B” Schedule Property under the Exchange Deed in question, does not exist at all. Such a plea has not been made by the plaintiff in his plaint, however, has been put forth for the first time in the impugned application. Whereas, the defendant tries to establish the existence of the said property by submitting the copy of Patta and Mortgage Deed in respect of the said



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property standing in the name of the plaintiff's grandmother Anjalai Ammal. Be that in either way, it is a matter of trial. In any event, determination of nature or measurement of the properties involved in the Exchange Deed by appointing an Advocate Commissioner, is not germane to decide the *lis* on hand.

15.The real object of the provisions under Order XXVI Rule 9 of CPC is only to assist the Courts in appreciating the evidence to arrive at a just conclusion. The said provision is very clear and lucid and its scope is very limited for the only purpose mentioned therein. Appointment of Advocate Commissioner cannot be taken as a tool by the parties to prove or disprove a claim, even before exhausting the classic method of proof by adducing oral and documentary evidence before the Court during the process of trial. Growing tendency of the litigants to collect evidence at the threshold by invoking the provisions of Order XXVI Rule 9 of CPC is to be deprecated. A similar view has been taken by the High Court of Madhya Pradesh, Indore Bench, in ***Smt. Teena Pandey and another v. Dr.Kirnesh Pandey, Indore, [M.P. No.2406 of 2019, dated 08.07.2019].***



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16. Therefore, the parties are at liberty to establish their respective cases by adducing oral and documentary evidence before the Court during trial and it is not the business of the Court to collect evidence in favour of a party, as held by the Hon'ble Supreme Court in ***Padam Sen and another v. The State of U.P. [AIR 1961 SC 218]***. This does not mean that, in the present case, Advocate Commissioner should not be appointed at all. It is always open to the trial Court to appoint an Advocate Commissioner to properly evaluate the oral and documentary evidence on record and render a just verdict, if it deems fit. However, it should be understood that the appointment of an Advocate Commissioner can be a final chance for the Court to decide the real dispute, but not a primary chance for the parties to prove their case. Therefore, the opportunity afforded by the trial Court to the plaintiff is unwarranted.

17. In the light of the above, the impugned order is set aside. Accordingly, this Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2022

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Internet : Yes
Index : Yes / No
Speaking order / Nonspeaking order

To

The District Munsif,
Panruti.



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S. KANNAMMAL, J.

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