



CRP(MD)No.2368 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CRP (MD) No.2368 of 2022
and
CMP (MD) No.11462 of 2022

Ayyachamy : Petitioner

Vs.

1.Chinnaathal

2.Packiyam

3.Chitra

4.Raman : Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to call for the records relating to the fair and decreetal order dated 30.08.2022, made in I.A.No.1 of 2022 in O.S.No.105 of 2020, on the file of the learned District Munsif cum Judicial Magistrate, Singampuneri and set aside the same.

For Petitioner : Mr.B.Jameel Arasu



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ORDER

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This civil revision petition is filed as against the order dated 30.08.2022, passed by the learned District Munsif cum Judicial Magistrate, Singampuneri, in I.A.No.1 of 2022 in O.S.No.105 of 2020, in and by which, the petitioner's plea to appoint an Advocate Commissioner was negatived.

2.Learned Counsel for the petitioner submitted that the petitioner is in occupation of the suit property, pursuant to part performance of an agreement of sale dated 09.04.1992. However, the defendants 1 & 2 have executed a release deed dated 14.08.2020 in favour of the third defendant, who, in turn, executed a sale deed dated 05.10.2020, in favour of the fourth defendant with respect to that property. Therefore, the petitioner, as plaintiff, has filed the suit in O.S.No. 105 of 2020 for specific performance, declaration and for permanent injunction.



3.He further submitted that the boundaries mentioned in the sale agreement and in the subsequent sale deed are different. Therefore, the petitioner has moved the interlocutory application in I.A.No.1 of 2022 under Order 26 Rule 9 CPC seeking appointment of Advocate Commissioner to measure the suit schedule properties and to prepare a sketch. However, the trial Court has dismissed the application and therefore, he prayed for appropriate orders.

4.This Court paid it's anxious consideration to the submissions made by the petitioner's Counsel and also to the materials placed on record.

5.The primary relief sought for in the suit is specific performance for a sale agreement dated 09.04.1992. The subsequent reliefs sought for, viz., declaration and permanent injunction, would be considered only if the primary relief is granted. For deciding the primary relief, ie., as to the veracity of



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B. PUGALENDHI, J.

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the alleged sale agreement dated 09.04.1992 and for deciding the willingness and readiness of the parties to execute this agreement, there is no need for appointing an Advocate Commissioner.

6.This Court, therefore, does not find any error in the order of the trial Court warranting interference. Accordingly, this revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Index : Yes / No
Internet : Yes
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29.11.2022

To

The District Munsif cum Judicial Magistrate,
Singampuneri.

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