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C.R.P.No.164 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.No.164 of 2023

and

C.M.P.No.1350 of 2023

1.M/s.Imirate Housing Development Pvt Ltd.,
Rep by its Managing Director
Mr.Jagadish Sridhar
Registered Office Address
No.13, Sobha Emerald,
Thondamuthur Road,
Vedapatti,
Coimbatore – 641 007.

2.Jagadish Sridhar

3.Sridhar Lakshmi Prabha

... Petitioners

Vs.

C.Sivaraj

... Respondent

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 09.12.2022 made in I.A.No.05 of 2022 in O.S.No.914 of 2021 on the file of Principal District Munsif Court, Coimbatore.

For Petitioners

: Mr.S.Mukunth



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Senior Counsel
For M/s.Sarvabhauman Associates

For Respondent

: Mr.C.R.Prasanan

ORDER

The civil revision petition has been instituted against the fair and final order dated 09.12.2022 passed in I.A.No.5 of 2022 in O.S.No.914 of 2021.

2. The revision petitioners are the defendants in the Suit. which was instituted by the respondent for permanent injunction. It is not in dispute that the issues are framed in the Suit and posted for trial. At that point of time, the revision petitioners filed an Interlocutory Application in I.A.No.5 of 2022 under order XXVI Rule 9 read with Section 151 of the Civil Procedure Code for appointment of an Advocate Commissioner to inspect the property and submit report.

3. The learned Senior Counsel appearing on behalf of the revision petitioners mainly contended that the reasons stated for rejecting the Interlocutory Application is not in consonance with the established principles. It is contended that the findings of the Trial Court reveals that the



Suit was posted for trial and therefore, the Interlocutory Application cannot be entertained.

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4. The learned Senior Counsel appearing on behalf of the revision petitioners contended that such a reason is untenable in view of the fact that the Advocate Commissioner can be appointed for the limited scope of finding out the nature of the property, which would enable the parties to adjudicate the issues effectively.

5. The learned counsel for the respondents objected the said contention by stating that the reasons in the order impugned not only regarding the listing of the matter for trial, but also on the ground that the defendants have filed a return statement setting out all the grounds, which would be sufficient enough to defend the case and the Interlocutory Application to appoint an Advocate Commissioner was filed in order to drag on the proceedings after listing the matter for trial and thus, this revision petition is to be rejected.

6. The Advocate Commissioner can be appointed only in the event of



any genuine doubt arising out of the issues and not otherwise. The terms stipulated under order XXVI Rule 9 of CPC “elucidating any manner in dispute” means that an Advocate Commissioner shall be appointed only to eradicate the doubt arising in the mind of the Court and not in mind of the parties to the Suit. The parties to the Suit may have several doubts in their minds, more so, about the properties and they will attempt to collect evidence or to dispute the evidence filed by the other party one way or other in order to establish their needs before the Trial Court.

7. Court cannot aid or party to such an idea of the litigants and the Court is expected to be cautious, while appointing an Advocate Commissioner. Especially for the purpose of identifying or to conduct and note down the features of the property. Only in the event of doubt, the Court can go into the suggestion of appointment of an Advocate Commissioner and the same cannot be in a mechanical manner. In other words, if the Court deems that without the Advocate Commissioner, it would not be in a position to resolve the disputes, then in that case the Court may appoint an Advocate Commissioner, but not otherwise. Therefore, complexity of the facts and circumstances of each case has to be taken into consideration for the appointment of an Advocate Commissioner.



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8. Mechanical appointment of an Advocate Commissioner, with the aid of the Court undoubtedly would cause prejudice to the other parties unnecessarily. Thus, appointment of an Advocate Commissioner cannot be done at the instances of the parties and it must be done, only if the Court forms an opinion that an Advocate Commissioner is warranted for the purpose of eradication of certain doubts or otherwise.

9. In the present case, the learned Senior Counsel appearing on behalf of the revision petitioners has stated that the Suit Schedule Property was converted as layouts and approval was obtained from the competent authority. While so, those documents can be relied upon for the purpose of establishing their case, which also can be disputed by the other side through other documents, if they possess. All such issues are to be adjudicated based on the documents and evidences. The parties cannot seek the aid of the Court for appointing an Advocate Commissioner and with the assistance and with the report of such Advocate Commissioner they cannot make an attempt to establish their case, which is impermissible and would result in abuse of the process contemplated under Order XXVI Rule 9 of CPC. Any excessive views of the procedure contemplated would also result in abuse.



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10. Thus, this Court is of the considered opinion that the Trial Court is right in rejecting the Interlocutory Application filed by the revision petitioners for appointment of an Advocate Commissioner. Accordingly, the order dated 09.12.2022 passed in I.A.No.5 of 2022 in O.S.No.914 of 2021 stands confirmed and consequently, the Civil Revision Petition in C.R.P.No.164 of 2023 is dismissed. No costs. Connected Miscellaneous Petition is closed.

27.01.2023

Jeni

Index : Yes

Neutral Citation : Yes

Speaking order



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To

The Judge,
Principal District Munsif Court,
Coimbatore.



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S.M.SUBRAMANIAM, J.

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