



CRP.No.365 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.03.2023

CORAM:

THE HONOURABLE MRS.JUSTICE **T.V.THAMILSELVI**

CRP.No.365 of 2023
and C.M.P.No.3029 of 2023

1. Lakshmi
2. Thamaraiselvi
3. Ashokkumar

... Petitioners

Vs.

Ranjan

... Respondent

PRAYER: Civil Revision petition is filed under Article 227 of the Constitution of India to set aside the order dated 23.09.2022 passed in I.A.No.2 of 2022 in O.S.No.196 of 2022 on the file of the learned Subordinate Judge, Gudiyatham, Vellore District.

For Petitioners : Mr.S.N.Subramani

For Respondent : Mr.D.Thirumoorthy
For Mrs.S.P.Arthi

ORDER

Challenging the impugned order dated 23.09.2022 passed by the learned Subordinate Judge, Gudiyatham, Vellore District, in I.A.No.2 of 2022 in O.S.No.196 of 2022, the defendants preferred this revision petition.



2. In fact, the petition in I.A.No.1 of 2022, filed the by the plaintiff under Order 39 Rule 1 & 2 of CPC., to grant interim injunction, was dismissed.

In respect of another petition filed under Order 26 Rule 9 of CPC in I.A.No.2 of 2022, to appoint Advocate Commissioner to measure the petition mentioned property with the help of qualified surveyor and note down the physical features, the trial Judge by allowing of the said application, an Advocate Commissioner was appointed and he filed initial report.

3. The learned counsel appearing for the petitioners/defendants submitted that in fact, no agreement with regard to B schedule property for which, the Commissioner was appointed and the plaintiff has manipulated the document as if the husband of the first defendant entered into sale agreement in respect of A and B Schedule properties. Without appreciating the real facts, the trial Judge erroneously appointed the Commissioner in the suit for specific performance. Hence, he prayed to set aside the order of the trial Judge in I.A.No.2 of 2022.

4. The contention of the respondent/plaintiff is that A schedule property has an extent of 660 Sq.ft., and the B schedule property has 93½ Sq.ft. All the properties were enjoyed by one Yuvaraj viz., husband of the first



CRP.No.365 of 2023

defendant and he entered into sale agreement in respect of A schedule property on 09.11.2020. Thereafter, he died leaving behind the defendants as his legal heirs, who refused to execute sale deed. Hence he filed the suit. B schedule property also belonged to the said Yuvaraj, which is also enjoyed by the defendants adjacent to the A schedule property and as per the village panchayat that property also given to an agreement which was entered by the said Yuvaraj in favour of this plaintiff. Therefore, he filed suit for specific performance.

5. Heard the learned counsel appearing on either sides and perused the records.

6. On seeing the plaint averment, the plaintiff specifically prayed the relief of specific performance and prayed for delivery of possession in respect of the B schedule property and also prayed injunction in respect of A schedule property. On perusal of the records filed by the plaintiff revealed that, the sale agreement said to be relied by the plaintiff dated 09.11.2020 is pertaining to the A schedule property with an extent of 660 sq.ft. The sale agreement said to be fabricated document as per the contention of the revision petitioners/defendants.



7. More over, on perusal of the said agreement, there is no mentioning about the B schedule property ad measuring 93½ sq.ft. In respect of B schedule property, the plaintiff has not produced any document to prove his plaint. Without appreciating all the legal consequences, the trial Judge appointed Advocate Commissioner to note down the physical features of the B Schedule property.

8. The objection raised by the defendants is that no such sale agreement in respect of A and B schedule properties was executed in favour of the plaintiff by the deceased Yuvaraj. In fact, after death of the said Yuvaraj, the plaintiff manipulated his signature and created the document Ex.A.1, sale agreement in respect of the A schedule property. All the above facts are subject to proof. However, on seeing the records revealed that for the B schedule property, the plaintiff has not produced any document.

9. Further more, in the suit for specific performance, appointment of Advocate Commissioner with regard to note down the physical feature such as is not necessary, because the relief claimed by the plaintiff in respect of B schedule property to execute sale deed which does not requires physical features of the B schedule property. Provided that the plaintiff ought to have



CRP.No.365 of 2023

proved his readiness, willingness and also genuineness of the sale agreement.

As observed by this Court in respect of the B schedule property there is no sale agreement. Therefore, the order of appointment made by the trial Court in I.A.No.2 of 2022 is liable to be set aside.

10. Accordingly, the impugned order dated 23.09.2022 passed by the learned Subordinate Judge, Gudiyatham, Vellore District, in I.A.No.2 of 2022 in O.S.No.196 of 2022, is hereby set aside. The trial Judge is directed to dispose the suit as early as possible. The liberty is given to the plaintiff to produce sufficient documents before the trial Court to prove his claim in respect of B schedule property.

11. With the above directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

28.03.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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CRP.No.365 of 2023

T.V.THAMILSELVI, J.

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To

The Subordinate Judge,
Gudiyatham,
Vellore District.

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