



C.R.P.No.3920 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.No.3920 of 2015
and C.M.P.No.435 of 2016

1. R.Sampath Kumar
2. R.Srinivasan

.. Petitioners

Vs.

1. S.Ethiraj Chettiar
2. Dr.Hari Ramesh
3. N.Kumar
4. Prabha Kumar
5. Jayalakshmi
6. Hatsun Agro Product Ltd,
Represented by its Managing Director,
Domaine Building,
Near TCS Training Center,
No.1/20, Rajiv Gandhi Road,
Karapakkam, Chennai-600 097.

7. The Joint Sub-Registrar-I,
Chennai South,
Jennis Road, Saidapet,
Chennai-600 015.

.. Respondents

Prayer:- Civil Revision Petition filed under Article 227 of Constitution of India to set aside the order and decretal order dated 06.08.2015 made in I.A.No.10047 of 2015 in O.S.No.3159 of 2015 on the file of XI



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Assistant Judge, City Civil Court, Chennai and thereby allow the Civil Revision Petition.

For Petitioners : Mr.R.Thiagarajan
For R1 to R5 and
R7 : No appearance
For R6 : Mr.P.Elaya Rajkumar
for M/s S.Ramalingam and Associates

ORDER

This Civil Revision Petition has been filed as against the order and decretal order dated 06.08.2015 made in I.A.No.10047 of 2015 in O.S.No.3159 of 2015 on the file of XI Assistant Judge, City Civil Court, Chennai, thereby dismissing the application seeking appointment of an Advocate Commissioner.

2. The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed a suit for declaration declaring that the sale deeds executed as illegal, invalid and non-est in the eyes of law. They also prayed for mandatory injunction directing the respondents 1 to 6 to surrender all the original documents described in the B schedule property, for direction directing the 7th respondent to make necessary entries in the revenue records and for permanent injunction, restraining



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the 6th respondent from in any manner interfering with the petitioners' peaceful possession and enjoyment of A schedule property.

3. Pending suit, the petitioners filed an application seeking appointment of an Advocate Commissioner on the ground that the respondents 1 to 6 are trying to create confusion in the mind of the Court by side-tracking the issue involved in the present suit. They had filed a color sketch to co-relate the documents filed along with the suit. Therefore, unless and until the property is localized with the supporting documents and the revenue records, the controversy involved in the proceedings inter-se between the parties cannot be effectively and effectually adjudicated and resolved by the Court. It was further contended that the controversy that has arisen between the parties herein to find out whether the property sought to be recovered has been encroached or not, can be investigated and adjudicated by the Court and the best way to find out the position is through local investigation by the Commissioner. However, the appeal filed for appointment of an Advocate Commissioner was dismissed and aggrieved by the same, this present Civil Revision Petition.



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4. The learned counsel for the petitioners submitted that there is a Grey area with regard to the boundaries of the suit property which would be only secured from spot itself, which is essential in the light of the Judgment reported in *1984 TNLJ 384* in the case of *Ponnusamy Pandaram Vs. Salem Jilla Vaiyappamalai Jangamagar Sangam* in which this Court held that the party has got a right to place evidence which he would require to substantiate his case before the Court and of course subject to the law of evidence and the Code and it is the duty of the Court to receive such evidence unless there are other justifiable factors in law to decline to receive such evidence. The law of evidence enjoins upon the party to prove the fact which he relies on and in that sense, an obligation is cast upon the party and if he fails to discharge that obligation, adverse consequences will follow and he will face the repercussions of the same. The right of the party to adduce evidence gets adjudicated in the interlocutory proceedings under Order XXVI Rule 9. When there is a decline by the Court to issue the commission asked for to make local investigation, the purpose behind it being significant and in



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stated cases imperative, too, that order certainly disposes of the right claimed by the party to place the requisite evidence on his behalf.

5. He also relied upon the Judgment reported in *MANU/SC/7838/2008* in the case of *Haryana Waqf Board Vs. Shanti Sarup and others*, in which the Hon'ble Supreme Court of India held that when there was no specific denial on the part of the respondents regarding the allegation of unauthorized possession in respect of the suit land by them. But the only controversy between the parties was regarding demarcation of the suit land because land of the respondents was adjacent to the suit land and the application for demarcation filed before the Trial Court was wrongly rejected. It is also not in dispute that even before the appellate Court, the appellant-Board had filed an application for appointment of a Advocate Commissioner for demarcation of the suit land. Therefore, the Advocate Commissioner should be appointed for the purpose of demarcation of the suit land. Further, he submitted that the Advocate Commissioner should be appointed has been considered and discussed at length that if there is a Grey area which requires clarification



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or confirmation and it is the duty of the Court to have the Commissioner appointed so that the best evidence can be placed before the Court so as to enable the Court to arrive at a just and proper conclusion and failure to do so, has resulted in manifest miscarriage of justice.

6. Per contra, the learned counsel for the 6th respondent submitted that even according to the petitioners, the total extent of the suit property is only 3,600 sq.ft out of 4800 sq.ft. Already, they had sold out in respect of 1200 sq.ft in favour of the third respondent and in turn, he sold out the property in favour of the 6th respondent herein. Further, there is absolutely no Grey area in order to appoint any Advocate Commissioner to localize the suit property. The petitioners filed rough plan, its self served documents, to show about the suit properties. According to the petitioners, the petitioners are in possession and enjoyment of the suit property. They filed a suit for declaration declaring the sale deed as null and void. Therefore, there is absolutely no necessity for appointment of an Advocate Commissioner and the Court below rightly dismissed the application.



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7. Heard Mr.R.Thiagarajan, the learned counsel appearing for the petitioners and Mr.P.Elaya Rajkumar, the learned counsel appearing for the sixth respondent.

8. The petitioners are the plaintiffs and they filed a suit for declaration and mandatory injunction. The prayer is as follows,

“ 1) For a declaration that the Settlement deed dated 15.05.1980 and registered as Document No.1529 of 1980, Joint Sub-Registrar-II, Saidapet, executed by Savithri Ammal in favour of S.Ethiraj Chettiar, as illegal, invalid and non-est in the eyes of law, to the extent of 2640 sq.ft of land on the western side, out of 11,000 sq.ft.

2) For a declaration that the Deed of Sale dated 25.03.1991 and registered as Document No.996 of 1991, on the file of Joint Sub-Registrar-I, Saidapet, executed by Ethiraj in favour of Dr.Hari Ramesh, as illegal, invalid and non-est in the eyes of law, to the extent of 1440 sq.ft of land on the Northern and North-Eastern sides,

3) For a declaration the Deed of sale dated 14.07.2000 and registered as Document No.3182 of 2000, on the file of Joint Sub-Registrar-I, Saidapet, executed by Jayalakshmi in favour of M/s Hatsun Agro Product Ltd, as illegal, invalid and non-est in the eyes of law, to the extent of 244 sq.ft of land on the western side,

4) For a declaration that the Deed of Sale dated 04.09.1995 and registered as Document No.3698 of 1995,



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on the file of Joint Sub-Registrar-I, Saidapet, executed by Dr.Hari Ramesh in favour of Jayalakshmi, as illegal, invalid and non-est in the eyes of law, to the extent of 248 sq.ft of land on the western side,

5) For a declaration that the Deed of Sale dated 14.07.2000 and registered as Document No.3186 of 2000, on the file of Joint Sub-Registrar-I, Saidapet, executed by Jayalakshmi in favour of M/s Hatsun Agro Product Ltd, as illegal, invalid and non-est in the eyes of law, to the extent of 248 sq.ft of land on the western side,

6) For a declaration that the Deed of Sale dated 04.09.1995 and registered as Document No.3699 of 1995, on the file of Joint Sub-Registrar-I, Saidapet, executed by Dr.Hari Ramesh in favour of Mrs.Prabhakumar, as illegal, invalid and non-est in the eyes of law, to the extent of 194 sq.ft of land on the western side,

7) For a declaration that the Deed of Sale dated 14.07.2000 and registered as Document No.3409 of 2000, on the file of Joint Sub-Registrar-I, Saidapet, executed by Mrs.Prabhakumar in favour of M/s Hatsun Agro Product Ltd, as illegal, invalid and non-est in the eyes of law, to the extent of 194 sq.ft of land on the western side,

8) For a declaration that the Deed of Sale dated 04.09.1995 and registered as Document No.3700 of 1995, on the file of Joint Sub-Registrar-I, Saidapet, executed by Dr.Hari Ramesh in favour of N.Kumar, as illegal, invalid and non-est in the eyes of law, to the extent of 754 sq.ft of land on the northern side of conveyed property to N.Kumar by the plaintiffs,

9) For a declaration that the Deed of Sale dated 14.07.2000 and registered as Document No.3179 of 2000, on the file of Joint Sub-Registrar-I, Saidapet, executed by



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N.Kumar in favour of M/s Hatsun Agro Product Ltd, as illegal, invalid and non-est in the eyes of law, to the extent of 754 sq.ft of land on the northern side of conveyed property to N.Kumar by the plaintiffs,

10) For a Mandatory injunction, directing the defendants 1 to 6 to surrender all the original documents decribed in the Plaint schedule 'B' to the Plaintiffs herein on a date to be fixed by this Hon'ble Court,

11) For a Direction to the 7th defendant office, to make necessary entries in their records, with regard to the decree passed in the present suit,

12) For a permanent injunction, restraining the 6th defendant, its officials, employees, servants or any other person or persons claiming through them or authorised by them from in any manner interfering with the plaintiffs' peaceful possession and enjoyment of the property more fully described in the plaint Schedule 'A',

13) For a permanent injunction, restraining the 6th defendant, its officials, employees, servants, or any other person or persons or agents claiming through them or authorised by them from in any manner encumbering or alienating or dealing with the plaint schedule 'A' mentioned property either by way of sale, mortgage, charge, less or joint development.”

9. The petitioners mainly raised grounds to seek appointment of an Advocate Commissioner that the respondents 1 to 6 are trying to create confusion in the mind of the Court by side- tracking the issue involved in the present proceedings. They also filed a color sketch to co-



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relate the documents filed along with the suit. The controversy that has arisen between the parties hereto to find out whether the property sought to be recovered has been encroached or not, can be investigated and adjudicated by the Court and the best way to find out the position is through local investigation by the Advocate Commissioner.

10. Admittedly, no property has been sought for recovery. The suit itself is filed for above said reliefs. A perusal of the affidavit filed in support of the appointment of an Advocate Commissioner and the schedule mentioned there revealed that the property situated at Thiruvanmiyur Village, Lattice Bridge Road, now Dr.Mthulakshmi Road, Chennai-600 041, comprised in Nanja Paimash No.351/A1, now co-related to S.No.126/1 Block No.23, Patta No.108, ad-measuring 4800 sq.ft. Whereas, the suit property is only 3600 sq.ft. The property which was already sold out in favour of the third respondent and in turn purchased by the 6th respondent also included in the application seeking appointment of an Advocate Commissioner. Further, already the petitioners had filed I.A.No.7929 of 2015 and 7930 of 2015 seeking for an interim injunction. Though, they were granted interim injunction.



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Thereafter, the 6th respondent filed a petition to vacate the interim injunction. The Trial Court dismissed the injunction application and aggrieved by the same, the petitioners preferred a Civil Miscellaneous Appeal Nos.95 and 96 of 2015 on the file of the III Additional City Civil court, Chennai and the same were dismissed.

11. Therefore, there is absolutely no ambiguity in the boundaries mentioned by the petitioners. If at all there is any encroachment, the petitioners ought to have proved the same by getting oral and documentary evidence. The appointment of an Advocate Commissioner is nothing but gathering evidence and it cannot be permitted. Therefore, the Judgments cited by the learned counsel for the petitioners are not helpful to the case on hand and the Court below rightly dismissed the application and this Court finds no infirmity or illegality in the order passed by the Court below and this revision is liable to be dismissed. The suit is of the year 2015 and the Trial Court is directed to dispose of the suit, within a period of six months from the date of receipt of a copy of this order.



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12. Accordingly, this Civil Revision Petition is dismissed.

Consequently, connected Miscellaneous petition is closed. No costs.

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Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

The XI Assistant Judge, City Civil Court, Chennai.

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and C.M.P.No.435 of 2016

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