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CRP(PD)No.112



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.1123 of 2016
and C.M.P.No.6168 of 2016

Indirani
(Represented by her Power of
Attorney A.Vincent Devaraj)

... Petitioner

Vs.

1.Kalpana
2.Selvaraj
3.Eswari
4.Mani

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decretal order dated 02.06.2015 made in I.A.No.1202 of 2014 in O.S.No.134 of 2013 on the file of the Additional District Munsif Court, Poonamallee.

For Petitioner : Mr.S.Ganesh
For R2 to R4 : Mr.G.Radhakrishnan

ORDER

The Civil Revision Petition arises against the order dated 02.06.2015 passed in I.A.No.1202 of 2014 in O.S.No.134 of 2013 on the file of the Additional District Munsif Court, Poonamallee.



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2. The plaintiff is the revision petitioner. The plaintiff seeks for declaration of title to the 'C' schedule property and to direct the 1st defendant Sulochana to quit and deliver the possession to her after removing the construction made by her. She also seeks for permanent injunction restraining the defendants 2 to 4 from interfering with her possession. Pending suit, the plaintiff moved an application in I.A.No.389 of 2013 for appointment of Advocate Commissioner. An Advocate Commissioner was appointed and also filed a report on 06.01.2014. The plaintiff has filed her objections on 28.02.2014. After a period of eight months, an application in I.A.No.1202 of 2014 was filed by the petitioner to re-issue the warrant to the same Commissioner to re-inspect the property and to note down the alleged encroachment made by the 1st defendant.

3. It is not the role of the Advocate Commissioner to find out whether there is any encroachment or not. That is the essential duty of the Court, which shall do so after recording the evidence and taking into consideration the Advocate Commissioner's report. The essential function of the Court to find out whether there is any encroachment cannot be delegated to the Advocate Commissioner. The learned trial Judge has dismissed the application holding that the details of the occupants in the suit property have been cited in the report. The learned trial Judge has granted liberty to the petitioner to examine the Taluk Surveyor in order to substantiate the case of the petitioner.



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4. Learned counsel for the revision petitioner would submit that a recent judgment of the Hon'ble Ms.Justice L.Victoria Gowri in the case of ***Pitchammal and others vs. Sivaniyapillai Ammal and others*** reported in ***(2023) 3 MLJ 415*** applies to the facts of the case.

5. A careful perusal of the judgment would show that my learned sister had granted permission for re-issuance of warrant on the ground that the revision petitioners therein were set exparte and were not given an opportunity to represent their case at the time of inspection by the Advocate Commissioner. That is not the situation in the present case. At the time of inspection by the Advocate Commissioner, one A.Vincent Devaraj, the power of attorney of the plaintiff was very much present and that has also been recorded in the report.

6. The second judgment that the learned counsel for the revision petitioner would rely upon is ***Kamala Devi vs. T.P.Manoharan*** reported in ***(2009) 1 MLJ 1334***. The said judgment also does not apply to the facts of the present case because that was the case, where the plaintiff had attempted to put the construction over the property of the defendant and there was a dispute with respect to the extent of the property. In this particular case, there is no such dispute. The case of the plaintiff is that she is the owner of the property and that 1st defendant has encroached the property and put up construction. This requires the plaintiff to prove her title first over



the property, which is now under the occupation of the 1st defendant. Both these judgments do not apply to the facts of the case.

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7. In view of the above, I am not convinced with the submissions made by the learned counsel for the petitioner and the Civil Revision Petition is dismissed. The dismissal of the CRP will not prevent the learned counsel for the petitioner from invoking the liberty granted by the trial Court for examination of the Taluk Surveyor as well as the Advocate Commissioner. Learned counsel for the petitioner seeks leave of this Court to file detailed objections to the Advocate Commissioner's report. The said leave is granted and he shall file his objections within a period of two weeks from today. On such filing, objections shall be taken on file.

8. With the above observation, the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

03.07.2023

(3/3)

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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V.LAKSHMINARAYANAN,J.

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To

The Additional District Munsif
Poonamallee.

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(3/3)