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C.R.P.No.1868 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.01.2023

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THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.1868 of 2020 &
C.M.P.No.11226 of 2020

Chandran

... Petitioner

Vs.

T.Shanthi

... Respondent

Civil Revision Petition is filed under Article 227 of the Constitution of India against the Suo Motu Docket Order passed in I.A.No.202 of 2018 in O.S.No.102 of 2018 dated 09.12.2019 on the file of the learned Subordinate Judge, Ottacamund.

For Petitioner : Mr.S.Elambharathi

For Respondent : Mr.Lenin and Bhagya

ORDER

The present Civil Revision Petition has been filed against the Suo Motu Docket Order passed in I.A.No.202 of 2018 in O.S.No.102 of 2018 dated 09.12.2019 on the file of the learned Subordinate Judge,



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Ottacamund.

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2. The brief facts of the case is as follows:

The petitioner is the defendant and the respondent is the plaintiff in the suit in O.S.No.102 of 2018 and the said suit has been filed for permanent injunction restraining the defendant from entering into suit schedule property. The respondent filed an application in I.A.No.202 of 2018 in I.A.No.196 of 2018 for appointment of Court / Advocate Commissioner to note down the physical features of the suit property along with photographs in the suit property. The said application was allowed by the court below directing the said Advocate Commissioner to measure the property in S.No.H/3/54, an extent of 4-8/16 cents, to measure the same and to identify and mark the 3 cents of land belonging to the petitioner / defendant, which has been sold by the said Tathan and to measure the same with the boundaries marking an extent of remaining 4 1/2 cents of land belonging to the respondent / plaintiff. Since the present dispute is with regard to the location of drainage or the pipeline, the court below also directed the Advocate Commissioner to find out whether the said Drainage / pipeline is situated in the 3 cents of land belonging to the petitioner / defendant or in the 4 1/2 cents of land belonging to the respondent / plaintiff.



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(ii) The said advocate commissioner also filed a report stating that the registered document shows that the respondent / plaintiff has 4 ½ cents of land and the extent of land of the petitioner / defendant is 3 cents and totally 7 ½ cents of land, as per the registered documents. Further, the total extent of land in T.S.No.H/3/54 is 6.79 cents. As per the plan submitted by the surveyor, the respondent / plaintiff is in possession of 4.48 cents of land together with the building standing thereon and the petitioner / defendant is in possession of 2.98 cents of land together with the building standing thereon. Further, the Surveyor in his plan has delineated in Yellow colour and shown the same as drainage area measuring 149 sq.feet or 0.34 cents, he states that there is no place for drainage or pipeline on the surface of the land of the petitioner or the respondent and filed the sketch and photographs also.

(iii) The objections were filed by the petitioner / defendant stating that the surveyor failed to furnish the details of 0.34 cents without furnishing the length and breadth of it. Further, the perusal of the sketch attached to the



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petitioner's defendant's sale deed dated 05.05.1995 bearing no.541 of 1995 would reveal the fact that the southern boundary of the petitioner/defendant's property and that of the respondent/plaintiff's property is a straight line without any deviation. But the sketch shows deviation which is incorrect and erroneous.

(iv) The court below after considering the pleadings and objections filed in I.A. 202 of 2018 had directed the Advocate Commissioner to find out whether the said drainage is within the boundary of the respondent / plaintiff or the petitioner / defendant and whether the said drainage is belonging to the petitioner or the respondent. Since the same can be proved only by digging the said cement area, the court below directed to dig the passage of the land, which lies between the land of the petitioner as well as respondent to find out whether there is a drainage in the property of the petitioner or respondent. The court below also directed to approach the competent revenue officials as well as the officials of the survey department, by way of a suo motu docket order dated 09.12.2019. Aggrieved by the said order, the petitioner has come up with the present Civil Revision Petition.



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3. The learned counsel for the petitioner submitted that the court below failed to see that the advocate commissioner in his report specifically stated that there is only a cemented pasage lying in between the builing belonging to the petitioner and the respondent and there are no traces of drainage line or pipe on the surface of the land lying in between the buildings of the petitioner and the respondent and the order of the court below is unsustainable and liable to be set aside.

4. The learned counsel for the petitioner also submits that the court below ought not to have passed suo motu order advising Commissioner of the Court to revisit the property to find out is there any drainage line already digged in between the property of the petitioner and the respondent by considering it as a preliminary issue, thereby sought to dismiss the said order.

5. Heard the learned counsel for the respondent and perused the documents placed on record.



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6. On going through the averments of the plaint as well as other documents filed by way of a typed set, it is seen that that there is a dispute between two neighbours, who originally purchased the property. According to the respondent / plaintiff, the suit property was purchased by one Thathan, by way of a registered sale deed dated 30.09.1982 and had constructed two portion of house together with the Assessment no.14325 bearing Door No.176-C. The said Thathan sold an extent of 0.02 cents of land along with the house bearing no.176-D to B.K.Nadhi Gowder, who is the father-in-law of the plaintiff by a registered sale deed dated 04.04.1990 on the file of the Joint Sub Registrar-I of Udhagamandalam in Document No.291/1990. The remaining $\frac{1}{2}$ share 0.02-8/16 cents of land along with another portion of house bearing Door No. 176-C assessed to no. 60023 to the plaintiff herein by way of gift settlement deed dated 04.05.2001. Out of the said purchase, the said Tathan sold the remaining 0.03 cents out of 0.07-8/16 to T.M.Raman. It is not in dispute that the houses of the petitioner as well as the respondent are situated adjacent to each other land and according to the petitioner, the pathway is situated in between the said two houses, but the petitioner / defendant submits that the said land belongs to her.



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7. It is relevant to note that the suit is filed for restraining the petitioner / defendant or any body over the enjoyment of the suit schedule property, but there is a dispute regarding the cemented area portion of the suit schedule property in between two houses, according to the respondent / plaintiff, she is claiming that the land belongs to her. Whether the said drainage is used by both the parties are to be looked into, hence the trial court was of the view that the advocate commissioner shall break out the said cemented area and findout whether in the cemented area, the pipeline is common or it has been only used by the defendant or only by the plaintiff, hence the court below directed the advocate commissioner to proceed further with the help of the surveyor.

8. In view of the above said facts and circumstances of the case, in order to bring a solution to both the parties, this Court hereby directs the learned Advocate Commissioner to proceed with the said direction issued by the trial court, in the presence of the parties concerned and in presence of the advocates concerned with the help of the surveyor to measure the property first and give the extent of land, viz., breadth and length of the land



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of the petitioner / defendant, identify the extent of land and the respondent / plaintiff, then, to find out whether there is any pipeline used as a drainage by either of the parties in the said cemented portion and photographs to be filed by the commissioner before the trial court. Further, the learned Advocate Commissioner shall file a report along with the sketch measurements, surveyor report and the photographs to enable the trial court to proceed further.

In the result, the Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

.01.2023

Index : Yes/No
Internet : Yes/No
Speaking /Non-Speaking Order
ssd

To

The Subordinate Judge,
Ottacamund.

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V.BHAVANI SUBBAROYAN, J.,

ssd

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