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C.R.P. Nos. 2143 & 2139 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2023

CORAM:

THE HONOURABLE **MRS. JUSTICE V.BHAVANI SUBBAROYAN**

C.R.P. Nos. 2143 & 2139 of 2023

Padmavathi@Padma

.. Petitioner in both C.R.Ps

Versus

1.N.Subramanian

2.E.Deivambal

3.P.Thangavel @ Bullet Raj

.. Respondents in

C.R.P.No.2143 of 2023

1.N.Subramanian

2.P.Thangavel @ Bullet Raj

.. Respondents in

C.R.P.No.2139 of 2023

Civil Revision Petitions filed under Section 227 of Civil Procedure Code to set aside the order dated 28.02.2023 in I.A.No.6 of 2023 in O.S.No.266 of 2016 & I.A.No.1 of 2023 in O.S.No.12 of 2019, passed by the learned 2nd Additional District and Sessions Judge, Tiruppur.

For Petitioner

in both C.R.Ps

: Mr.T.N.Rajagopalan

For Respondents

in both C.R.Ps

: Mr.V.P.Sengottuvel

Senior Advocate for

Mrs.K.Indupriya



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COMMON ORDER

The above civil revision petitions are filed praying to set aside the order dated 28.02.2023 in I.A.No.6 of 2023 in O.S.No.266 of 2016 and I.A.No.1 of 2023 in O.S.No.12 of 2019, passed by the learned 2nd Additional District and Sessions Judge, Tiruppur.

2. The revision petitioner herein is the 2nd defendant in O.S.No.266 of 2016 and O.S.12 of 2019. The 1st respondent in both revision petitions is the plaintiff in both the suits and the 2nd respondent in CRP.2143 of 2023 is the 2nd plaintiff in O.S.No.266 of 2016. The other respondents are defendants in both the suits.

3. Learned counsel for both side present and argued the matter.

4. I.A.No.6 of 2023 in OS.No.266 of 2016 has been filed by the revision petitioner herein/2nd defendant praying to appoint an Advocate Commissioner to identify, inspect and measure the suit properties with the assistance of Taluk Surveyor and to file a report with sketch by point out



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as to in which layout the present suit properties are situate and also to point out in which half of S.No.340/1 of Muthanampalayam Village, the suit properties are situated.

5. I.A.No.1 of 2023 in O.S.No.12 of 2019 has been filed by the Revision Petitioner/2nd defendant praying to scrap the advocate commissioner's report in O.S.No.12 of 2019.

6. The trial court dismissed the above interlocutory applications, against which, the revision petitioner has filed the present revisions.

7. Originally the Suit in O.S.No.12 of 2019 was filed in the year 2019 seeking for permanent injunction restraining defendants from interfering with plaintiff's peaceful possession in the suit property. In the other suit filed by the present respondents 1 and 2 for declaration of title of plaintiff/first respondent in respect of Item No.1 (b) of the suit property and the declaration of title of the second respondent/2nd plaintiff in respect of item No.1(a) of the suit properties. All the properties fall within plot No.20 B in Ram Nagar Layout in Survey No.340/1 of Muthanampalayam



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Village. According to the revision petitioner/2nd defendant in the suits, the claim of the plaintiffs that both items of the suit properties were situated to the East of 30 feet North South Road was totally false. The total extent of property in Survey No.340 of Muthanampalayam Village is 17.80 acres. The revision petitioner's predecessor in Title namely Periyasamy Gounder, who is also her Father-in-law is entitled to 8.54 acres as per Partition Deed dated 29.12.1959 and the property have been settled in favour of his daughter Nagarathinam @ Rathinambal as per settlement deed dated 05.02.1990. Subsequently the revision petitioner/2nd defendant acquired title to the said property by virtue of a decree passed in O.S.No.465 of 2012 as per registered sale deed dated 13.11.2014. Periyasamy Gounder formed a layout of house sites and the same was named as 'Vasantham Nagar' which is an approved one. While executing a Gift deed dated 18.04.1995 in favour of the local authority, 30 feet north south road is bounded on the east by plots Nos. 1 to 20 of the said layout and the plaintiffs in the present suit have wrongly claimed.

(ii) It is further averred in the interlocutory applications that during the cross examination of P.W.1/plaintiff, it was admitted that Periyasamy



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Gounder's land of acre 0.14 ½ is shown to be annexed with P.W.1's land of acres 8.76 in Ex.A27 (2nd sketch). It is stated that the plaintiffs who clandestinely contested the suit as if the revision petitioner and her predecessor-in Title are not owning any property to the East of 30 feet north south road, have now revealed the truth at the time of cross examination by admitting that a land of an extent measuring 0.41 ½ acre is available. Therefore, it was prayed by the revision petitioner/2nd defendant before the trial court that in the suit in O.S.No.266 of 2016, unless and until the present suit properties were measured by the Advocate Commissioner with the assistance of Taluk Surveyor to find out the truth, it is not possible for the Trial Court to arrive at appropriate finding.

8. In the above said IAs, counter was filed by the plaintiffs denying the averments and stated that Advocate Commissioner was appointed in O.S.No.35 of 2011 to measure the suit properties with the assistance of Taluk Surveyor and the report was filed 12 years back, however, several adjournments at the time of cross examination was sought by the 2nd defendant and that the 2nd defendant has come up with the present I.A., to appoint an advocate commissioner to measure S.F.No.340 of



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Muthanampalayam Village with assistance of Taluk Surveyor and confirm his western boundary of acres 8.53 ½ acres.

(ii) It was further averred in the counter filed in IA that the Advocate Commissioner visited S.F.No.340 with Taluk Surveyor and measured the same and confirmed the extent of acres 17.08 in the Survey Field. The Advocate Commissioner measured from the Eastern Boundary of S.F.No.340 and confirmed the western boundary of 8.54 acres of Eastern Portion, which includes S.F.No.340/2 and S.F.No.340/3 and the Surveyor also measured all the properties by metes and bounds and hence Periyasamy Gounder has already sold what he was entitled to and the revision petitioner/2nd defendant has no inch of land in S.F.No.340. In the counter, it is further stated that the other suit was filed by the revision petitioner in O.S.No.391 of 2020 by producing the bogus document dated 13.11.2014 and misinterpreting the evidence of PW.1 in the cross examination.

9. On the above pleadings in the IAs and the counter filed by the



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plaintiffs, the trial court found that the second defendant filed I.A.6 of 2023 under Order 26 Rule 9 and Section 151 of C.P.C to appoint an advocate commissioner to identify, inspect and measure the Suit properties with the assistance of the Taluk Surveyor and to file a report with sketch to pointed out as to in which layout the present suit properties are situated and also to point out in which half of S.F.No.340/1 of Muthanampalayam Village, the suit properties are situated. The said petition was dismissed by the trial court on the following findings :-

“On perusal of the Advocate Commissioner's Report and Plans, it reveals that already two plans of the Taluk Surveyor and the Plan of Advocate Commissioner are filed along with the Report and the subdivisions in S.F.No.340, which are 340/1, 340/2 and 340/3 are clearly shown in all the three plans. The present Suit is filed for declaration and permanent injunction and it is the duty of the plaintiffs to prove their title and possession and the identity of the suit properties, if there is any dispute. The petitioner who is one of the defendants need not disprove the title or the possession of the plaintiffs. As already the advocate commissioner has filed his report in detail along with plans answering the



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question now raised by the petitioner in this petitioner. It is not necessary for scrapping the report already marked in the suit in O.S.No.12 of 2019 or to reappoint the advocate commissioner to inspect the suit property again. As contended by the respondents, the claim of the petitioner seeking to appoint advocate commissioner after 12 years and seeking to scrap the report after 12 years is not at all sustainable and it is a delaying tactic and the same cannot be permitted. So, it is held that as already sufficient materials are available to decide the dispute involved in both the suits, it is not necessary for appointment of advocate commissioner in O.S.No.266 of 2016 or to scrap the report already filed in O.S.No.12 of 2019. Hence, the petitioner is not entitled for the relief claimed in this petition.

In the result, this petition is dismissed. No costs.”

10. The Trial Court after considering the pleadings and the counter filed, had come to the conclusion that already Advocate Commissioner's Report has been filed. Therefore, the prayer and contention of the revision petitioner with regard to appointment of advocate commissioner to inspect the suit property does not merit acceptance.

11. However, this court, on going through the earlier advocate



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commissioner's report filed in I.A.No.464 of 2011 in O.S.No.35 of 2011, it is seen that the advocate commissioner appointed by the trial court has only found out the schedule property boundaries, but not measured the entire suit property. The advocate commissioner has only marked the boundaries and sketch to that effect was submitted in the report before the trial Court.

12. It is relevant to point out herein that the parties to the suits have not claimed measurement of the entire property in the report of the advocate commissioner, which in the considered view of this court, is very essential for determining the issues before the trial court in the suits.

13. The report of the advocate commissioner would go to show that the schedule of the suit property alone was measured in the 30 feet adjacent to the 30 feet road (i.e.,lands adjacent to the road) but that was not stated in the report. As regards Survey No.340/1, there is no report by the Advocate Commissioner. As such, this court deems it fit and necessary to appoint an Advocate Commissioner for fresh inspection and to note down the measurement of Survey No.340/1. In the considered opinion of



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this court, such report will be useful in proper adjudication of the suits.

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14. Accordingly, Mr.P.Subramanian (MS 1174/2006) No: 303, K.M.Towers, Binny Compound Kumaran Road, Tirupur-641 601 (Cell No.9364112404) is appointed as Advocate Commissioner. The Advocate Commissioner shall inspect the subject lands and shall measure the entire survey numbers of the disputed lands including Survey No.340/1 and shall file a report clearly pointing out the boundaries and the total extent of land in the schedule properties. The petitioner shall pay remuneration of Rs.25,000/- (Rupees Twenty Five Thousand only) to the learned Advocate Commissioner forthwith. The Advocate Commissioner shall submit his report before the Court below within a period of one month from the date of receipt of copy of this order. The trial Court shall proceed with the trial and shall dispose of the suits as expeditiously as possible, preferably within a period of six months after the receipt of report by the fresh Advocate Commissioner appointed by this court.

15. With the above directions, the CRPs are disposed of. No costs.

26.07.2023



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Index: Yes/No

Speaking order : Yes/No

Neutral Citation : Yes/No

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To

The learned 2nd Additional District and Sessions Judge, Tiruppur.

V.BHAVANI SUBBAROYAN, J.

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