



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2023

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRP No. 3002 of 2023
& CMP No. 18548 of 2023

1.Sridhar
2.Prabakar
3.Subramani

...Petitioners/Petitioners/Defendants 1 - 3
Vs.

Auroville Foundation, Auroville,
Rep. By the Officer on Special duty,
Auroville Foundation Bhavan,
Auroville, Vanur Taluk,
Villupuram District – 605 101.

....Respondent/Respondent/Plaintiff

PRAYER : This Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 11.07.2023 in I.A No. 8 of 2023 in O.S No. 346 of 2022 on the file of the II Additional District Court, Thindivanam.

For Petitioners : Mr.V.Ragavachari, Senior counsel
for B.S. Mitraneeeshaa

For Respondent : Mr.Arvind Subramanian, Senior counsel
for Anirudh A Sriram

**ORDER**

This petition has been filed to set aside the fair and decreetal order dated 11.07.2023 in I.A No. 8 of 2023 in O.S No. 346 of 2022 on the file of the II Additional District Court, Thindivanam.

2. The respondent herein/plaintiff filed a suit before the II Additional District Court, Thindivanam in O.S No. 346 of 2022, for the relief of declaration and other consequential relief in respect of suit property in survey No. 428/ new survey No. 426/1E. According to the plaintiff they purchased the suit property from Venkataraman Naidu father of the defendants/petitioners 1 and 2 and the defendants also appeared before the Trial Court and filed their written statement. During the pendency of the suit proceedings the petitioners herein/defendants filed I.A No. 8 of 2023 to appoint Advocate commissioner to inspect the suit property of the plaintiff as well as the property of the respondent with the help of the qualified surveyor and to survey, measure the same, and to note down the physical features and file a report and plan thereof. The said application was contested by the respondent/plaintiff stating that in order to collect the evidence the petitioner filed the above application as if he is having right over the property the defendant filed the application to appoint the advocate



commissioner report in a suit filed by plaintiff as such is not maintainable and also denied the right over the property. After considering the submissions on either side the Trial Court held that in year 1992 properties were purchased by the respondent all these days defendants not taken any steps to measure the property only after filing the suit now they filed the application as such is unjust, accordingly dismissed the said application. Challenging the same the petitioner filed this civil Revision petition.

3. The learned senior counsel appeared for the respondent submits that on 17.06.1981, Mr. Venkatarama Naidu had executed a sale deed in favour of one Mr. Sambandamoorthy vide Document No. 2512/1981 wherein an extent of 3 acres in Old Survey No. 428 was sold. It is pertinent to mention that in the sale deed, at page 6 wherein the schedule of the property has been mentioned, it clearly states that the subject property of that sale transaction was 3 acres of the property derived through the settlement deed. Subsequently on 20.12.1981, this property was sold by the said Mr. Sambandamoorthy to Commerce under Sri Aurobindo Guidance Private Limited vide Document No. 3447/1981. Commerce under Sri Aurobindo Guidance Private Limited, in turn, on 01.01.1993, sold this



property in favour of M/s. Aditi Diamonds Private Limited vide Document No.16/1993. Thereafter, on 12.09.2022, M/s. Aditi Diamonds had sold the property in favour of one Goldinglass India Private Limited in Document No. 6534/2022. Further he stated that insofar as the Respondent/Plaintiff is concerned, they had purchased an extent of 21 acres in Survey No. 426/1E through Six sale deeds executed by Mr. Venakatarama Naidu in favour of the Respondent Foundation in the year 1992. Further he submits that entire extent of land which was gifted to Mr. Venkatarama Naidu by his sister Mrs. Geetha in 1972 has been alienated by the said Mr. Venkatarama Naidu and there is no land left over the 23.40 acres of land as per the boundaries mentioned in the settlement deed. It is also imperative to state herein that after the Respondent Foundation had purchased the 21 acres of land in Survey No. 426/1E in the year 1992, the extent was sub divided and new Survey No. 426/1E1 was provided and joint patta in patta number 704 was issued in favour of the Respondent Foundation. However, issue began to crop up when the Petitioners attempted to meddle with the Respondent's peaceful possession of the suit property and it was learnt that the 1st Petitioner had executed an illegal release deed in favour of the 2 Petitioner in Document No. 1168 of 2022 and the 2 Petitioner, in turn, had executed an



illegal sale deed in favour of the 3rd Petitioner in Document No. 2472 of 2022 wherein an extent of 2.40 acres was sold to the 3rd Petitioner being aggrieved by the actions of the Petitioners, the Respondent had filed the said suit before the Court Below seeking for various declaratory relief and injunctive relief qua the suit property and the illegal documents executed by the Petitioners herein. In the suit, the Respondent Foundation sought for an ad-interim injunction restraining the Petitioners from interfering with the Respondent's possession of the suit property till the disposal of the suit. The Court below, vide order dated 20.06.2022 had allowed the said application and an order of ad-interim injunction, as prayed for in the said application was granted in favour of the Respondent. This order is the subject matter of appeal in CMA No. 1409 of 2023 which is pending before this Hon'ble Court however no interim order has been granted in the said appeal. Further, the Court below had dismissed I.A. No. 8 of 2023 on 11.07.2023 on the following grounds:

- (a) There was no disputation qua the Respondent / Plaintiff's ownership and possession of the suit properties.
- (b) The Petitioners had not disputed challenged the 1992 sale deeds through which the Respondent became the owner of the suit properties.
- (c) In the 1992 sale deeds of the Respondent, the four boundaries surrounding the suit properties have been specifically mentioned.



Therefore, there was no compelling necessity to note down the physical features of the suit properties.

(d) The Petitioners cannot attempt to gather evidence under the guise or seeking for appointment of an advocate commissioner.

4. Further, he submits that on analysis of the reasoning given by the Court below, it can be seen that the Court below has taken note of all the relevant considerations for deciding an application of an appointment of an advocate commissioner and ultimately arrived at the conclusion that the impugned application filed by the Petitioners deserved to be dismissed. When the Court below had rightly arrived at the conclusion that the Petitioners are attempting to gather evidence in the guise of seeking for the appointment of an advocate commissioner, it cannot be said that the impugned order suffers from any legal infirmity / perversity. In this view of the matter, the impugned order does not call for any interference by this Hon'ble Court and the impugned order has to be sustained. Further he submitted that out of 3.17 acres 2.17 acres is road portion there is no such extent as disputed by the petitioner.

5. Heard, the learned senior counsel appearing for the petitioner and



the learned senior counsel appearing for the respondent.

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6. Considering the submissions on either side, the plaintiff filed a suit for declaratory relief and also the dispute is with regard to the extent of property, and the same can be find either by measuring the property, moreover the description of property on ground is necessary to adjudicate the said issue, but the Trial court erroneously dismissed the petition as such is liable to be set aside. Accordingly, I.A No. 8 of 2023 in O.S No. 346 of 2022 is set aside. Further, at request of both parties, this court appoints Mr. R.Thirumavalavan, as Advocate Commissioner and this court fix a sum of Rs. 50,000/- as remuneration for the Advocate Commissioner, and petitioner shall bear this Cost. Further, the Advocate Commissioner is directed to survey the property with the help of Government surveyor in Tindivanam Taluk as per the Tamil Nadu Survey and Boundaries Act, 1923, and submit the report before the Trial Court within a period of eight weeks from the date of receipt of a copy of this Order. Accordingly, this petition is disposed of. No cost. Consequentially, connected miscellaneous petition is closed.

18.10.2023

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T.V.THAMILSELVI,J.

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To

1.The II Additional District Court, Thindivanam.

2. R.Thirumavalavan,

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2nd Floor, New Saram, Pondicherry – 605 013.

Mobile No. 9443602360, 6383848411.

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