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C.R.P.No.3509 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.09.2023

CORAM

THE HON'BLE MRS JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.3509 of 2023
and C.M.P.No.21904 of 2023

Muthukumar

...Petitioner

Vs.

Jaganathan(died)

1.Padmavathi

2.J.Kalavathi

3.Ambikadevi

...Respondents

PRAYER:-Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the Fair and Final Order dated 15.06.2023 made in I.A.No.293 of 2023 in O.S.No.56 of 2008 on the file of the Additional District Munsif Judge,Tirupur.

For Petitioner : K.S.Karthik Raja

ORDER

This Civil Revision Petition has been filed by the petitioner challenging the fair and final order dated 15.06.2023 made in I.A.No.293 of 2023 in O.S.No.56 of 2008 on the file of the Additional District Munsif,



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Tiruppur.

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2. The petitioner/plaintiff filed a suit in O.S.No.56 of 2008, seeking permanent injunction against the respondents not to disturb the peaceful possession and enjoyment of the property. The suit scheduled property originally belongs to one Rayappa Gounder by virtue of a compromise recorded in I.A.No.386 of 1961 in O.S.No.107 of 1961 on the file of the Subordinate Court, Coimbatore. After the demise of the Rayappa Gounder, his sons formed a 30 feet wide road on the eastern border of Rayappa Gounder's share and started selling the share by three different sale deeds on various dates. By sale Deed, dated 17.03.1994, they again sold another extent of 6,260 square feet out of the share of Palanisamy to P.Loganathan, brother of the plaintiff. After the demise of the said Ramasamy, his son, P.Balashanmugham entitled to his share and on 03.03.1999, Balashanmugham and the defendant sold the remaining extent of 6,238 square feet to the plaintiff. Thereby, the entire extent allotted to Rayappa Gounder, north and west of 30 feet road was sold to the plaintiff. By another Sale Deed, dated 03.03.1999, Balashanmugham and Jaganathan



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sold an extent of 0.05 ½ acres to the plaintiff, the property sold is a vacant land north of Rajavaikkal and South of the lands of the defendant. At the time of describing the property in the above sale deed, inadvertently a typographical error was committed by the document writer while mentioning the boundaries on the east and west. While that being the case, the plaintiff wanted to erect wire fencing to protect his property and the same was measured by the Municipal Surveyor in the presence of the plaintiff and the defendant and stones were fixed, whereas, on 22.04.2007, the defendant, along with rowdy elements trespassed into the plaintiff's property. Hence, he had filed the suit for permanent injunction. A written statement was filed on behalf of the respondents denying the averments made in the plaint and admitted that the suit property was sold to the plaintiff, but, denied the description of the property stated in the petition was not sold to the plaintiff.

3. The plaintiff filed an application in I.A.No.293 of 2023 in O.S.No.56 of 2008 under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure to appoint an Advocate Commissioner along with a Town



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Surveyor to measure the scheduled mentioned property. The respondents filed a counter in the said application stating that the present application has been filed to drag on the proceedings. The suit was filed in the year 2008 and pending for the past 15 years. Though the evidence has been completed and posted for arguments, the plaintiff has come forward with the present application only with an malafied intention to drag on the proceedings. The respondents had further stated that already an Advocate Commissioner was appointed and a report was filed after inspection stating that due to the bushes in the suit scheduled property he was not able to measure the same. Since the description of the property is wrong as per plaint, there is no necessity to appoint an Advocate Commissioner again for the same.

4. The trial Court after considering the pleadings and arguments advanced on both sides, dismissed the application vide its order dated 15.06.2023. Aggrieved by the said order of dismissal, the petitioner filed the present Revision.

5. Heard the learned counsel for the petitioner and perused the



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materials available on record before this Court.

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6. On perusal of records it is seen that the petitioner had already filed an application for appointment of Advocate Commissioner and an Advocate Commissioner was appointed and a report was also filed stating that he was not able to measure the property due to the bushes in the suit scheduled property and now again he had filed another application for appointment of Advocate Commissioner which is only to drag on the proceedings since the same is pending for more than 14 years. Hence, this Court is of the view that the trial Court was right in dismissing the application and there is no illegality and irregularity found in the order of the trial Court.

6. Accordingly, this Civil Revision Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

25.09.2023

Index : Yes/No



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Speaking : Yes/No
NCC : Yes/No
gba

To:
The Learned Additional District Munsif Judge,
Tirupur

V.BHAVANI SUBBAROYAN.J.,

gba

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