



C.R.P.No.3927 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

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

C.R.P.No.3927 of 2023
and
C.M.P.No.24205 of 2023

Kamala ... Petitioner

-Vs-

1. Venkatachalam
2. Mani
3. Jaya ... Respondents

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order passed by the District Munsif Court, Omalur, Salem District dated 10.08.2023 passed in I.A.No.3 of 2022 in O.S.No.110 of 2022 and to allow the I.A.No.3 of 2022 in O.S.No.110 of 2022 as prayed for.

For Petitioner : Mr.T.Saikrishnan



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ORDER

Challenging the impugned order passed in I.A.No.3 of 2022 in O.S.No.110 of 2022 passed by the learned District Munsif, Omalur, Salem, the Revision Petitioner/plaintiff preferred this Civil Revision Petition.

2. Since the relief is claimed challenging the order passed by the trial judge, notice to the respondents is dispensed with.

3. Before the trial court, the Revision Petitioner/plaintiff filed a suit in O.S.No. 110 of 2022 against the defendants 1 to 3 for the relief of declaration, injunction and other consequential relief in respect of the suit property claiming that the plaintiff purchased the property from one Samiyannan through a sale deed dated 10.01.2022 and as an absolute owner, she enjoyed the property. However, the defendants 1 and 2, who are none other than brother-in-law of plaintiff and close relatives, have attempted to cause interference in the enjoyment of the suit property. Hence, she filed a suit for declaration and permanent injunction. On receipt of notice, the defendants have filed their written statement and denied her claim. However, after her purchase, she developed the property and to prove the said developments, she filed an application in I.A.No.3 of 2022 to appoint an advocate commissioner to note down the physical



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features of the property and also to measure the same with a qualified surveyor. That application was dismissed by the trial judge holding that the Commissioner cannot be appointed for collection of evidence and also there is no dispute with regard to the identification of property. Challenging the same, the Revision Petitioner/Plaintiff preferred this Civil Revision Petition.

4. The learned counsel for Revision Petitioner would submit that in the suit property, there is row of houses and in respect of enjoyment of the same, there is a dispute. However, after the purchase, she made developments in the suit property and the same was denied by them. So, to prove the same and also to note down the physical features, necessity arose for her to file the said application for appointment of advocate commissioner. But, the same was dismissed by the trial judge without considering her submissions. Hence, he prayed to set aside the findings of trial judge.

5. Records perused. On perusal of entire facts, it would reveals that the plaintiff filed a suit for declaration and other consequential relief against the defendants, who are none other than close relatives. As per the description of property, there is row of houses and with regard to



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enjoyment of the same, there is a dispute. Furthermore, the developments made by the plaintiff can be established through the Commissioner's report and it would also minimise the court work. But, the trial judge erroneously concludes that only for collection of evidence, the said application was filed, as such is erroneous one and the same is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the findings rendered by the trial judge in I.A.No.3 of 2022 in O.S.No.110 of 2022 is set aside and the said application is ordered to be allowed. The trial judge is directed to take the application on file and appoint an Advocate Commissioner. Thereafter, the advocate commissioner is directed to visit the property and file a report as early as possible within 6 weeks. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes/No
Speaking Order : Yes/No
rpp

To

The District Munsif, Omalur.



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T.V.THAMILSELVI, J.

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