



C.R.P.PD (MD)No.135 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.PD (MD).No.135 of 2023

1.Padmareka

2.A.Padmagirija

Petitioners through their power agent
M.Arumugam

... Petitioners

Vs.

Kat Nainar @ Mohammed Kat Nainar

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.36 of 2022 on the file of the Additional Sub-Court, Palani dated 27.09.2022.

For Petitioner :Mr.T.Lenin Kumar

ORDER

This Civil Revision Petition is filed to set aside the fair and decreetal order passed in I.A.No.1 of 2022 in O.S.No.36 of 2022 on the file of the Additional Sub-Court, Palani dated 27.09.2022.



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2. The revision petitioners are the plaintiffs in O.S.No.36 of 2022, before the Additional Sub Court, Palani. Originally, the suit was filed for declaration and mandatory injunction to remove the fencing of the suit schedule properties by the respondent. In the above suit, the petitioners also filed I.A.No.1 of 2022 under Order XXVI Rule 9 and Section 151 of Civil Procedure Code for appointment of an Advocate Commissioner. In the said suit, the respondent has also filed a written statement on 26.07.2022.

3. By the impugned order, the trial Court has dismissed the application filed by the petitioners on 27.09.2022 with the following observations:

"6. On perusal of records it is seen that the petitioners have filed the above suit for declaration and consequential mandatory injunction in respect of the "A B C" portion marked as red colour in the plaint rough sketch. On perusal of the pleadings of both parties and rival contention of the parties it is seen that there is dispute between the parties regarding the right, title and possession of the petitioner schedule



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properties. Further the petitioners definite case is that the respondent encroached a portion of their property shown as "ABC" in the rough sketch. But the respondent stoutly denied that he did not make any encroachment in the suit property.

7. At this juncture the learned counsel for the petitioners argued that the report of the Advocate Commissioner will minimise the scope of adducing evidence by both parties in the suit and that it will enlighten this Court about the physical features of the properties and that hence an Advocate Commissioner may be appointed to inspect the petitioner schedule properties with the aid of a qualified Surveyor and the VAO. But the learned counsel for the respondent argued that already the suit filed by the plaintiffs predecessor in respect of the petitioner schedule properties before the learned District Munsif, Palani in O.S.No.456/2007 was dismissed after full trial on 28.04.2022 and that the petitioners who purchased the property during the pendency of the above suit have filed the suit and this petition only to harass the respondent and that hence the petitioner is liable to be dismissed.



8. According to the petitioner, they have purchased the petition schedule properties through their power agent Arumugam from one Chitrakala on 06.11.2013 by two registered sale deeds. It is stated by the petitioners that the said Chitrakala purchased the properties from one Venkatachalam through his power agent Natarajan on 15.12.2010. According to the respondent, the said Venkatachalam through his power agent Nagarajan has filed a suit before the District Munsif Court, Palani in O.S.No.456 of 2007 for declaration and other reliefs and after full trial it was dismissed. It is not denied by the petitioners also. The respondent has filed the certified copy of the statement. He has also filed the certified copy of the evidence given by the said Natarajan in the above suit as document No.3 along with his written statement. Admittedly, the respondent herein is the first defendant in the above suit. A bare reading of the above evidence of the said Natarajan in O.S.No.456 of 2007 clearly goes to show that during pendency of the suit he sold the property of 63 cents in S.No. 1223/6A to Chitrakala on 15.12.2010. As rightly pointed out by the learned counsel for the



respondent in the evidence given by K.V.Natarajan in O.S.No.456 of 2007 he has stated as follows:

வழக்கு நிலுவையில் இருந்த சமயம் 15.12.2010 ஆம் தேதி சித்ரகலா என்பவருக்கு சர்வே எண்.1223/6ஏ-யில் 63 சென்ட் உள்ள இடத்தை ரூபாய் 15 இலட்சத்துக்கு கிரையம் செய்து கொடுத்துள்ளேன் என்றால் சரிதான்”

The petitioners also have admitted the above fact. According to the petitioners the said Chitrakala purchased the properties from one Venkatachalam through his power agent Natarajan on 15.12.2010 and the petitioners purchased the properties from the said Chitrakala on 06.11.2013. so it is clear that the petitioners and the said chitrakala are the lis-pendense purchasers of the properties during the pendency of the suit in O.S.No.456 of 2007. As already stated admittedly the above suit in O.S.No.456 of 2007 was dismissed by the District Munsif Court, Palani after full trial on 28.04.2022. So this Court is of the view that the contention of the respondent



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that the suit is filed by the petitioners who are the lis-pendense the purchasers only to harass the respondent and that since the suit filed by the petitioners predecessor itself was dismissed, this petition is not maintainable does merit acceptance. Hence, the petitioners being the lis pendens purchasers are not entitled to agitate the matter once again and cannot sought for appointment of Advocate Commissioner to inspect the properties.

9. Further in the prayer column in the petitioner, the petitioners have stated that an Advocate Commissioner has to be appointed to measure the properties with the aid of a surveyor and VAO to locate the property and to find out the extent of property encroached by the respondent. So it is clear that the petitioners want to know the location of the property and the exact extent of the property said to have been encroached by the respondent. So as rightly pointed out by the respondent, the petitioners have filed the petition for collection of evidence which is unsustainable in law. It is for the plaintiff to locate their property and to mention the correct extent of



property said to have been encroached by the respondent. They cannot ask for appointment of Commissioner for collection of evidence in support of their case.

10.Hence considering the above facts and circumstances of this case and in the interest of justice this Court is of the view that this petition is devoid of merits and the same deserves to be dismissed.

4. A reading for the above order indicates that the petitioners appears to have purchased the properties from their vendor on 06.11.2013, during the pendency of suit in O.S.No.456 of 2007 between the petitioners vendor's vendor against the respondent. The suit was also dismissed by the District Munsif Court, Palani on 28.04.2022.

5. The dispute in the suit pertains to 10 cents out of 63 cents of land allegedly purchased by the petitioners on 06.11.2013. Whether the land belongs to the respondent or the petitioners is to be decided. Therefore, there is no necessity for appointing an Advocate



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Commissioner, particularly, in the light of the dismissal of O.S.No.456 of 2007 by the District Munsif Court, Palani, on 28.04.2022, this civil revision petition is liable to be dismissed.

6. Accordingly, the present Civil Revision Petition stands dismissed. The Additional Sub Court, Palani, is directed to proceed with the trial in O.S.No.36 of 2022 as expeditiously as possible and dispose of the suit preferable within a period of 15 months from the date of receipt of a copy of this order. There shall be no order as to costs.

25.04.2023

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

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