



C.R.P(MD)No.663 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.03.2023**

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.R.P(MD)No.663 of 2023

and

C.M.P(MD)No.3076 of 2023

K.Tamilselvan

... Petitioner

Vs.

1.M.Natarajan

Pachaiyappan (Died)

2.Aruna Kanagasumathi

3.Aruna Padmalavanya

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to allow this civil revision petition by setting aside the fair order and decretal order made in I.A.No.1 of 2022 in O.S.No.61 of 2017, dated 19.01.2023 on the file of the Principal Sub Court, Srivilliputhur.

For Petitioner : Mr.M.Thirunavukkarasu

ORDER

The petitioner is the first defendant in O.S.No.61 of 2017 filed by the first respondent before the Principal Sub Court, Srivilliputhur. The



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first respondent filed the above suit for declaration and recovery of possession and for mean profit of the property. The petitioner claims to have purchased the property from the first respondent's brother, Pachaiyappan (since deceased) whose interest is represented by the respondents 2 and 3 as his legal heirs.

2. The specific case of the petitioner is that the petitioner purchased the property from the deceased Pachaiyappan by a registered sale deed, dated 04.06.2009 and that the petitioner has made several improvements to the land by constructing a house by putting up the common wall etc. In the said suit, the petitioner filed I.A.No.1 of 2022 under Order 26 Rule 10 A of C.P.C., for appointment of Advocate Commissioner to inspect and give a report.

3. The specific case of the petitioner is that the first respondent/plaintiff was aware of the sale made to the petitioner by the late Pachaiyappan during the life time on 04.06.2009 and that he allowed the developments made by the petitioner and thereafter filed the present suit. It is submitted that the petitioner is entitled for an order of appointment of Advocate Commissioner to give a report.



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4. The application was by the respondents on the ground that suit was filed for declaration and recovery of possession and therefore there is no dispute. The lower Court has also shifted the contention of the first respondent stating that there are no disputes regarding the boundaries and physical features of the land.

5. I have considered the arguments advanced by the learned counsel for the petitioner and perused the plaint filed in O.S.No.61 of 2017 and the affidavit filed in support of I.A.No.1 of 2022.

6. The petitioner has also filed written statement in the said proceedings. The issues are yet to be framed. A reading of the written statement indicates that the petitioner has taken a plea regarding the improvement. The petitioner has not claimed title over the property on the strength of the sale deed, dated 04.06.2009 purportedly executed by the first respondent/plaintiff's brother. The appointment of Advocate Commissioner is only meant for giving report regarding physical features of the property, where there is a dispute as to the boundaries. The petitioner has made averments regarding the alleged improvements to



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the land pursuant to sale deed, dated 04.06.2009. This can be established by the petitioner during trial by introducing documentary or oral evidence. Therefore, there is a necessity for an Advocate Commissioner to be appointed to give a report as there is no dispute.

6. Liberty is however given to the petitioner to let in evidence regarding the improvements made by the petitioner during trial before the Court. Considering the fact that suit is of the year 2017, the Trial Court shall endeavour to bring a closure to the dispute one way or the other preferably within a period of 18 months from the date of receipt of copy of this order. There is no merit in the present civil revision petition. Accordingly, the present Civil Revision Petition stands dismissed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To



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1.The Principal Sub Court, Srivilliputhur

2.The Section Officer
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

C.SARAVANAN,J.

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