



C.R.P.(MD) No.593 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.593 of 2021

and

C.M.P.(MD) No.3260 of 2021

Sundaresan Pillai

... Petitioner

Vs.

1.Sunil Kumar

2.Sekhara Pillai

3.Ayyappan

4.Shylaja

5.Indira

6.Santhosh Kumar

7.Retinam

8.Priya

9.Mahesh

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 03.02.2021 in I.A.No.676 of 2015 in O.S.No.304 of 2008 on the file of the Additional District Munsif Court, Padmanabhapuram.



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For Petitioner : Mr.M.Vivek Kumar

For R1 to R3 : M/s.D.Selvakumari

ORDER

The petitioner has challenged the impugned order dated 03.02.2021 passed by the Additional District Munsif Court, Padmanabhapuram in I.A.No.676 of 2015 in O.S.No.304 of 2008.

2. I.A.No.676 of 2015 was filed by the petitioner under Order XXVI Rule 9 and Section 151 of Code of Civil Procedure, 1908 for appointment of an Advocate Commissioner.

3. By the impugned order, the Court below has dismissed the said I.A.No.676 of 2015 filed by the petitioner for appointment of an Advocate Commissioner with the following observations:-

10. In a suit for cancellation of sale deed executed by defendants it is for the plaintiff to prove that the defendant has no locus standi to execute and fraudulently the deed has been executed. And only based on that the relief of injunction can be sought. To note down whether the plaint schedule property lies along with the house site or not, to note down the



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access to the suit schedule property or to note the list of standing trees, the Advocate Commissioner cannot be appointed, as it amounts to collection of evidence. Further with regard to the relief sought for, physical

features of the property is unnecessary since the plaintiff has to prove that the sale deed dated 09.08.2007 by the second defendant in a fraudulent manner. Any relief of injunction follows if the plaintiff is successful in proving the title and possession.

11. It is a settled principle in law, that appointing Advocate Commissioner for making enquiry about factum of possession of the property in dispute is improper. The same can be proved by letting in oral and documentary evidence. This suit being filed for cancellation of sale deed and for injunction appointment of Advocate Commissioner is not necessary.

12. In the result, this petition is dismissed. No costs.

4. The petitioner is the first plaintiff in O.S.No.304 of 2008. O.S.No.304 of 2008 was suit filed for declaration and permanent injunction.

5. The petitioner has not secured any interim relief of this Court. E-Court website reveals that the case is till pending before the Court below.



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WEB COPY 6. In the affidavit filed in support of I.A.No.676 of 2015, the petitioner has stated as follows:-

5. The 1st respondent collusion with the second respondent had fraudulently created a sale deed for 11 cents of land is Re.Sy.No.631/7 under sale deed No. 2024/2007 dated 09.08.2007. The said document is absolutely sham, nominal and void document. The 2nd respondent had no manner of right to execute the said sale deed and the alleged vendee the first respondent will not get any manner of right under the said impugned sale deed. As a matter of fact there is no such property as described in the said sale deed.

7. A reading of the above passage from the Paragraph No.5 from the affidavit filed in support of I.A.No.676 of 2015 makes it clear that indeed the petitioner has not made out a case for appointment of an Advocate Commissioner. The attempt of the petitioner appears to collect evidence through the office of the Advocate Commissioner which has been rightly rejected by the Additional District Munsif Court, Padmanabhapuram *vide* impugned order dated 03.02.2021 in I.A.No.676 of 2015. Therefore, the impugned order dated 03.02.2021 in I.A.No.676 of 2015 does not call for any interference.



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WEB COPY 8. The suit is of the year 2008 and is pending for a long period.

Considering the above, the Additional District Munsif Court, Padmanabhapuram shall dispose of O.S.No.304 of 2008, as expeditiously as possible, preferably, within a period of 9 months from the date of receipt of a copy of this order.

9. This Civil Revision Petition stands dismissed with the above observations. No cost. Consequently, connected Miscellaneous Petition is closed.

27.06.2023

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

The Additional District Munsif Court,
Padmanabhapuram.



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C.SARAVANAN, J.

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