



C.R.P.(MD)No.1101 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.1101 of 2023

- 1.V.Govindan
 - 2.E.Balamani
 - 3.Minor E.Venkatesh
 - 4.Minor E.Vijayalakshmi
- [Minor 3rd and 4th petitioners are represented
by their mother and natural guardian of the
second petitioner herein)

.. Petitioners

Versus

- 1.The State of Tamil Nadu
Rep. by its District Collector,
Pudukottai.
- 2.The District Registrar,
Combined Court Building,
Pudukottai.
- 3.The Sub-Registrar,
Kullathur S.R.O.,
Keeranur,
Pudukkottai – 622 502.
- 4.The Head Quarters Deputy Tahsildar,
Trichy East, Singarathope,
Devathanam,
Trichy – 620 003.
- 5.A.Karuppaiah

6.Pushparaj

<https://www.mhc.tn.gov.in/judis>



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.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 01.12.2022, passed in I.A.No.5 of 2022 in O.S.No.347 of 2022, on the file of the Subordinate Court, Keeranur.

For Petitioners : Mr.R.Vigneshwaran

For R1 to R4 : Mr.S.Kameswaran
Government Advocate

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 01.12.2022, passed in I.A.No.5 of 2022 in O.S.No.347 of 2022, on the file of the Subordinate Court, Keeranur.

2.The petitioners are the plaintiffs in O.S.No.347 of 2022 before the Sub Court, Keeranur. The said suit has been filed for cancellation of the sale deed, dated 23.06.2022 executed by the first petitioner/first plaintiff in favour of the fifth respondent/fifth defendant.

3.The case of the petitioners is that a fraud was perpetrated on the first petitioner/first plaintiff by making it seem as if the first petitioner alone was the owner of the suit schedule property, though the property belongs to both the first petitioner and also the petitioners 2 to 4/plaintiffs 2 to 4, who are the legal representatives of Late.V.Ezhumalai, the first petitioner's brother.



4.It is the specific case of the petitioners that the land in question measuring an extent of 6 cents belongs to the first petitioner's father and Late.V.Ezhuamalai's father and that taking advantage of the illiteracy of the first petitioner, the fifth respondent managed to get a sale deed registered in his favour on 23.06.2022 and that the further alienation has been made in favour of the seventh respondent. It is further submitted that in the said suit, the petitioner filed I.A.No.5 of 2022 under Order XXVI Rule 9 of C.P.C., for appointing an Advocate Commissioner. It is submitted that though the seventh respondent remained ex parte in the above said application, the Court below has declined to appoint an Advocate Commissioner.

5.It is submitted that the petitioners were also dispossessed from the property by the seventh respondent, who is now putting up construction. Hence, the petitioners were constrained to file a petition under Section 6 of the Specific Relief Act, 1963. The relevant portion of the impugned order reads as under:-

"5.The point for determination is, Whether the petition is liable to be allowed or not?

Petitioner has stated that the petitioner has filed this suit to declare the sale deed dated 23.06.2022 as null and void and to declare the subsequent sale deed made by the 5th defendant in favour of 7th defendant as void ab initio. Since the 5th defendant by playing fraud has obtain the sale deed from the plaintiffs. The petitioner further submit that the petitioner has taken steps and gave complaint to the SP, Pudukkottai to lodge complaint against the 5th defendant. But they did not file/lodge FIR. While so, on 02.08.2022 the defendant and his persons tried to disturb the possession of the petitioner by raising compound wall and the same was objected by the petitioners but subsequently on 08.08.2022 the 7th defendant came to the suit property and started putting up the construction and claimed that he has purchased the property from 4th defendant. But on verifying the encumbrance



certificate 5th defendant sold the property to the 7th defendant and therefore in order to note down the construction in the suit properties Advocate commissioner has to be appointed to inspect the suit properties and to measure the suit property with the help of a qualified surveyor.

The respondents 1 to 4 endorsed no counter and the respondent 5 to 7 have not filed counter and hence set exparte.

Both side heard. On perusal of the above averments of the petitioner in the petition and also in the plaint, the plaintiff as filed the suit to set aside the sale deed 23.06.2022 as null and void and also the subsequent sale deed by the 5th defendant in favour of the 7th defendant as null and void. Subsequently during the pending of case, the petitioner has filed the petition u/s 6 of Specific Relief Act and the same is pending for filing counter. On perusal of the above, there is no dispute with regard to indentify of the property and the extent and boundaries of the property. The petitioner's only contention is that 7th the defendant is trying to raise construction in the suit property inspite of his objections and therefore advocate commissioner to be appointed to measure the suit property with the help of a qualified surveyor and to inspect the property to note down the physical features. When the plaintiff has filed the suit to set aside the sale deed as null and void, there is no need to measure and inspect the property with the help of surveyor and Advocate Commissioner. Further u/s 6 of Specific Relief Act it has to be decided whether the plaintiff has been illegally disposed off within a period of six months. Therefore considering the nature of the suit this Court considers there is no need to appoint an advocate commissioner to inspect the suit property and to note down the physical features in it and also to measure the property with the help of qualified surveyor and therefore this court considers that the petition has to be dismissed.

In the result, the petition is dismissed. No costs."

6.The petitioners are claiming ownership of the suit schedule property and sought for a declaration that the sale deed executed by the first petitioner in favour of the fifth respondent on 23.06.2022 was null and void. The further case of the petitioners appears to be that they have been unlawfully dispossessed from the suit schedule property, and therefore, it is necessary an Advocate Commissioner be



appointed to cause an inspection and give a report about the physical features of the suit schedule property.

7.I have considered the arguments advanced by the learned counsel for the petitioners and perused the materials available on record.

8.In my view, there is no merit in the present Civil Revision Petition filed by the petitioners for appointing an Advocate Commissioner, as admittedly, the suit itself is for a declaration that the sale deed dated 23.06.2022 obtained by the fifth respondent was on account of the alleged fraud played on the first petitioner. The rights of the petitioners will be subject to the final outcome in the suit. Therefore, this Civil Revision Petition is not maintainable and the same is liable to be dismissed. Accordingly, it is dismissed. No costs. The Trial Court is directed to proceed with the trial subject to service of summons on the respondents.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
smn2

24.04.2023

To

1.The Subordinate Judge,
Keeranur.

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C.SARAVANAN, J.

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