



CRP (MD) Nos.1217 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	26.07.2023
Pronounced on	13.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) Nos.1217 and 1218 of 2023
and
C.M.P.(MD) No.5868 of 2023

Rajeswari

... Revision Petitioner in
both CRPs

Versus

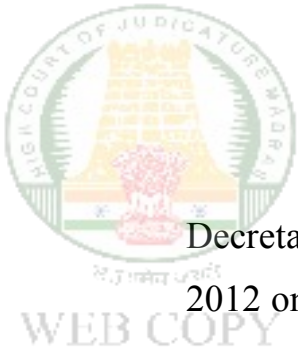
1.M.Ponnusamy

2.P.Balasubramanian

... Respondents in
both CRPs

Prayer in CRP.(MD)No.1217 of 2023: The Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the Fair and Decretal order dated 15.12.2022 made in I.A.No.3 of 2022 in O.S.No.3 of 2012 on the file of the II Additional District Munsif Court, Trichy.

Prayer in CRP.(MD)No.1218 of 2023: The Civil Revision Petition is filed under article 227 of the Constitution of India, to set aside the Fair and



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Decretal order dated 15.12.2022 made in I.A.No.4 of 2022 in O.S.No.3 of 2012 on the file of the II Additional District Munsif Court, Trichy.

For Revision Petitioner : Mr.S.I.Muthiah
(in both CRPs)

For Respondents : Mr.V.R.Shanmuganathan for R1
(in both CRPs)

COMMON ORDER

These Civil Revision Petitions are preferred against the fair and decretal order dated 15.12.2022 made in I.A.Nos.3 and 4 of 2022 in O.S.No.3 of 2012 on the file of the II Additional District Munsif Court, Trichy.

2. According to the Revision Petitioner, the Respondents herein filed O.S.No.3 of 2012 on the file of the II Additional District Munsif Court, Trichy for the relief for permanent injunction against the Respondents/Defendants from interfering with her peaceful possession and enjoyment of the suit property. During the pendency of the above suit, the Revision Petitioner filed an application in I.A.No.4 of 2022 for appointment of an Advocate Commissioner to localize the suit property with survey records. However, the Court below dismissed the said application aggrieved



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over the same, the present Revision had been preferred.

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3. According to the Revision Petitioner on 07.01.2011, she purchase the suit property comprised in Survey No.41 in Kottappattu Village, Trichy Taluk and District vide Registered Sale deed and put up a tiled house and from then onwards, the Revision Petitioner is in peaceful possession and enjoyment of the same. While so, the Respondents/Defendants without any manner of right, title or interest over the suit properties attempted to interfere in her peaceful possession and enjoyment of the property and tried to demolish the tiled house in the above property. Hence, the Revision Petitioner was constrained to file the above suit. It is further submitted that in the written statement filed by the Respondents/Defendants, they have perfected title over the property under the Unregistered Sale Deed, dated 10.08.2000 and they claimed to be in possession and enjoyment of the suit property. It is further submitted that in the sale deed of the Revision Petitioner on 07.01.2011, it is mentioned that the suit property is situated at Survey No.41 but the document relied by the Respondents/Defendants is, with regard to the property in Survey No.42. Hence, the Revision Petitioner



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filed the above application in I.A.No.4 of 2022 for appointment of Advocate Commissioner to localize the suit property and also filed another application in I.A.No.3 of 2022 for reopening the case from the stage of Arguments.

4. However, the learned Trial Judge has dismissed the above application by stating that the Advocate Commissioner cannot be appointed for collecting evidence since it is suit for bare injunction and also dismissed the application for reopening the case. Hence, the Revision Petitioner approached this Court for setting aside the order passed by the Trial Court.

5. The learned counsel appearing for the Revision Petitioner would submit that adjudicate of local investigation by an Advocate Commissioner is not to collect evidence, it is only to clarify or explain any point which is doubtful on evidence on record. Therefore, local investigation is required to clarify the doubt about the measurement of land, identification or location of a adjudicate. He would further submit that measurement and identification of the suit property is necessary to arrive at proper conclusion since the report of Advocate Commissioner is only a guiding factor and no



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prejudice will be caused to the other suits. To support to his contention, he has relied upon the cases in ***Rangasamy v. The Superintending Engineer and Others*** reported in **2006(5) CTC 501** and ***K.V.Perumal and Others v. N.Gokulavasan and Others*** reported in **2019 (2) MWN (Civil) 514**.

6. On the other hand, the learned counsel appearing for the Respondents/Defendants would submit that at the belated and after conclusion of evidence and final arguments, the Plaintiff cannot be permitted to file such application to fill up the lacunae. He would further contend that the provisions under Section 151 of Code of Civil Procedure and Order 18 Rule 17 cannot be used routinely and merely for asking. Hence, the Trial Court has rightly dismissed the application which warrants no interference. To support to his contention, he has relied upon the cases reported in Hon'ble Supreme Court in ***M/s.Bagai Construction v. M/s.Gupta Building Material Store*** reported in **2013 124 AIC 70** and ***K.K.Velusamy v. N.Palanisamy*** reported in **2011 101 AIC 81**.

7. Heard both sides and perused the records.



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8. The Revision Petitioner/Plaintiff filed the suit for bare injunction restraining the Defendants from interference in her peaceful possession and the enjoyment in the suit property. According to the Revision Petitioner, he purchased the suit property which is in Survey No.41, but the Respondents/Defendants claimed that the suit property is in Survey No.42 in the Kottappattu Village, Trichy District. Hence, it is necessary for appointing an Advocate Commissioner and identify the suit property and arrive at a just and complete adjudication of the lis on hand. No doubt, petition under Order 26 Rule 9 of Code of Civil Procedure cannot be permitted to collect evidence. Though an Advocate Commissioner cannot be appointed for taking measurements of the suit properties in a mechanical manner, if there is any doubt about the area of the land, identification or location of the property. Then, local investigation is necessary. In the instant case, there is a doubt in the Survey numbers where the suit properties are located.

9. There are two different sale deeds with different survey numbers. The Plaintiff and the Defendant claims that the suit property belong to them as per their sale deeds. Therefore, the local investigation is required



to clarify the doubt about the area of land, its identification or its location.

The Trial Court ought to have consider the above fact and allowed the application for appointment of an Advocate Commissioner for local inspection. The report of the Advocate Commissioner will be the riding factor to decide the issue in dispute along with oral and documentary evidence on record. Even if the Advocate Commissioner is appointed, the report filed by the Advocate Commissioner is not binding on the Court of law and the Court is entitled to act independently based on its conclusion on the strength of the oral and documentary evidence on record.

10. Here also, even if the Advocate Commissioner is appointed then the Court is entitled to act independently based on the documents produced and oral evidence adduced by the parties. Hence, the appointment of an Advocate Commissioner will not cause any prejudice to the Respondents.

11. In view of the aforesaid facts and circumstances, this Court gives a direction to the Trial Court to appoint an Advocate Commissioner to



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localize the suit property with the help of qualified Surveyor and the Advocate Commissioner shall file a report before the Trial Court. The parties are directed to produce their respective title deeds to the Advocate Commissioner at the time of his inspection. Considering the fact that the suit is of the year 2012, the Trial Court is directed to dispose the same within a period of six (6) months from the date of receipt of a copy of this Order.

12. Therefore, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

13.12.2023

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Index:Yes/No
Speaking Order : Yes/No



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K.GOVINDARAJAN THILAKAVADI,J.

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To

The II Additional District Munsif Court,
Trichy.

ORDER MADE IN

C.R.P.(MD) Nos.1217 and 1218 of 2023
and
C.M.P.(MD) No.5868 of 2023

13.12.2023