



C.R.P.(MD)No.2117 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2023

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THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P.(MD)No.2117 of 2014

and

M.P.(MD)No.1 of 2014

Avudam Ali

... Petitioner

Vs.

Rajan Durai

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 02.12.2013 passed in I.A.No.471 of 2013 in O.S.No.42 of 2010 on the file of the Additional District Munsif Court, Nanguneri by allowing this civil revision petition.

For Petitioner : Mr.D.Nallathambi

For Respondent : Mr.S.Sivathilakar



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ORDER

This civil revision petition has been filed by the defendant in O.S.No.42 of 2010 as against the order passed by the Additional District Munsif, Nanguneri in I.A.No.471 of 2013 dated 02.12.2013.

2.The revision petitioner/defendant filed a petition in I.A.No. 471 of 2013 in O.S.No.42 of 2010 seeking direction from the trial Court to direct the Advocate Commissioner to measure the suit property as per the sale deed dated 21.05.1994. Detailed counter was filed by the respondent/plaintiff wherein, it is stated that at the time of inspection, it is only possible to measure the property by utilizing the revenue records and hence, this petition is not maintainable.

3.The learned counsel appearing for the petitioner submitted that the suit is for declaration and recovery of possession of item 1 and 2 of the suit scheduled property. The petitioner/defendant and the respondent/plaintiff purchased respective properties from the very same vendor. However, item two of the suit scheduled property contains four cents in survey no.257/3 in Seevalaperi



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village. The learned counsel for the petitioner/defendant contended that he is in possession of four cents comprised in S.No. 257/3 in Seevalaperi village and only due to the cloud in the location of the said 4 cents, the suit came to be filed by the plaintiff for declaration and recovery of possession. An application for appointment of Advocate Commissioner is filed in I.A.No.23 of 2010 wherein Mr.Balan, Advocate was appointed as an Advocate Commissioner. The learned counsel for the petitioner submitted that he has no objection in Mr.Balan being appointed as an Advocate Commissioner. However, it is evident from the commissioner application that, the same was filed only for the purpose of measuring the second item of the suit property. In view of the same, the revision petitioner/defendant anticipates that at the time of inspection, the Advocate Commissioner may not proceed towards measuring the entire property on the basis of the revenue records. Hence, the petitioner filed the present interlocutory application and it is necessary to direct the Advocate Commissioner to measure the property as per revenue records. However, the Court below dismissed the petition in I.A.No.471 of 2013 stating that the delay and non-cooperation of the revision petitioner/defendant in producing documents to the Advocate Commissioner, who was appointed as per the order in I.A.No.23 of



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2010, for site inspection, is wanton and on that basis the learned Trial Court has proceeded to dismiss the above interlocutory application. Aggrieved over the same, this civil revision petition has been filed and the same is liable to allowed.

4.Per contra, the learned counsel for the respondent/plaintiff vehemently objected and submitted that the petitioner has not cooperated with the commissioner and he has not produced any documents facilitating the Commissioner to execute his warrant.

5.However, in a suit for declaration and recovery of possession, it is pertinent that each and every aspect of property in question has to be taken into account and this is a case wherein the second item of the suit scheduled property has to be ascertained, which could not be properly done without appointing a qualified surveyor. In view of the same, no prejudice will be caused to the respondent/plaintiff if the commissioner proceeds to inspect the property with the aid of sale deed dated 21.05.1994 and also the connected revenue records.

6.Hence, this Court is of the considered view that the commissioner, who was appointed in I.A.No.23 of 2010 may



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proceed with the assistance of a qualified surveyor to inspect the entire suit scheduled property on the basis of the revenue records along with sale deed dated 21.05.1994 and file a report before the Additional District Munsif Court, Nanguneri, within a period of one month from the date of receipt of a copy of this order.

7. With the above directions, the order in I.A.No.471 of 2013 dated 02.12.2013 is hereby set aside and thereby allowing I.A. No.471 of 2013. Consequently, this civil revision petition is also allowed. The petitioner is directed to co-operate with the commissioner without adopting any dilatory tactics. No costs. Consequently, connected miscellaneous petition is closed.

03.03.2023

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

1. The Additional District Munsif Court,
Nanguneri.
2. The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

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