



C.R.P.(MD).No.1820 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(MD)No.1820 of 2019

and

C.M.P(MD) No.9374 of 2019

R.Selvaraj ... Petitioner/Petitioner/1st Defendant
-vs-

1. Sudarsana Devi ... 1st Respondent/Respondent/
Plaintiff

2. Santharam Subbu

3. Virumandi ... Respondents 2 & 3/Respondents /
Defendants 2 and 3

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and executable order dated 21.01.2019 passed in the application in I.A.No.387 of 2018 in O.S.No.250 of 2017 on the file of the Subordinate Court, Thirumangalam.

For Petitioner : Mr.J.Barathan

For Respondents : Mr.PT.S.Narendravasan - for R1

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and executable



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order dated 21.01.2019 passed in the application in I.A.No.387 of 2018 in O.S.No.250 of 2017 on the file of the Subordinate Court, Thirumangalam.

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2. The petitioner herein is the first defendant before the Court below.

The first respondent is the plaintiff and the respondents 2 and 3 are the defendants 2 and 3 before the Court below.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. The brief facts which give rise to the instant Civil Revision Petition are that, the plaintiff has filed the suit for the relief of permanent injunction in respect of the Plot No.6 in S.F.No.45/1A-1. The suit was resisted by the defendants contending that they are the owner of the property in Plot No.5 in the very same S.F.Numbers and that they are not at all disputing the right of the plaintiff in respect of the Plot No.6. However, the plaintiff only attempted to interfere with her possession in respect of Plot No.5. In that context, they moved an application for appointment of an Advocate Commissioner which was resisted by the plaintiff and ultimately, the Court below passed the



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impugned order and dismissed the Commissioner Application. Aggrieved with the said order, the first defendant is before this Court.

5. The learned counsel appearing for the petitioner would vehemently submit that the very Commissioner application necessitated based upon the pleadings of the plaint, and would draw the attention of this Court in respect of the plaint pleadings made in paragraph Nos.5 and 6 of the plaint. Wherein the plaintiff has disputed the very existence of Plot No.5 and they have stated that the 1st defendant, who is the petitioner herein, has fabricated certain documents in respect of Plot No.5 and based on that, they are attempting to encroach upon the plaintiff's property.

6. Therefore, the learned counsel appearing for the first defendant would submit that, the plaintiff is very much disputing the identity of the suit property and that though they referred as Plot No. 5, they contend that the sale deed which stands in the name of the defendants, is a fabricated one with reference to the suit property.



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7. However, the learned counsel for the plaintiff/first respondent would submit that the 1st defendant in the written statement categorically admitted the right and title of the plaintiff in respect of the Plot No.6. Therefore, there is no point in allowing the Commission Application and would submit that the order passed by the Court below is a well considered one and is liable to be confirmed.

8. This Court has given anxious consideration to the submissions of the learned counsel for the petitioner and the learned counsel for the first respondent.

9. From the submissions made by the learned counsel for the petitioner and also from seeing the averments made in paragraph Nos.5 and 6 of the plaint, it is amply clear that there is a dispute in respect of the identity of the suit property. According to the plaintiff, the suit property is Plot No.6. However, they would contend that the defendant by fabricating certain documents, as if the defendant purchased the Plot No.5, are attempting to encroach upon the Plot No.6.



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10. Therefore, as rightly submitted by the learned counsel for the petitioner, this Court is of the view that there is a dispute regarding the identity of the suit property. Only if such dispute is resolved, the issue can be effectively disposed of. Further the identity could be explained before the Court lucidly by way of an appointment of Advocate Commissioner with the assistance of Surveyor. Therefore, this Court deems it appropriate to interfere with the order passed by the Court below.

11. In the result, this Civil Revision Petition is **allowed** and the order passed by the Court below in I.A.No.387 of 2018 is set aside and the matter is remitted back to the Court below to appoint an Advocate Commissioner as prayed in the petition. The Court below is directed to dispose of the suit in O.S.No.250 of 2017 as expeditiously as possible, preferably within a period of six months from the date of receipt of the copy of this order. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

14.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Subordinate Court,
Thirumangalam.



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C.KUMARAPPAN,J.

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