



CRP PD(MD)No.2632 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Ravichandran

... Petitioner

Vs

Dhanalakshmi (Died)

1.Jeyakumar

2.Narayanasamy

3.Venkatesh

4.The Sub Registrar

Sub Registrar's Office,

Virudhunagar Main Road,

Sivakasi Taluk,

Virudhunagar District.

5.Kanchana

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed by the Subordinate Court, Sivakasi in I.A.No.1 of 2022 in O.S.No.103 of 2015, dated 22.08.2022.



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For Petitioner : Mr.M.Solaisamy

For Respondents : Mr.A.Arumugam for
For M/s.Ajmal Associates

ORDER

This Civil Revision Petition is filed as against the fair and decreetal order passed by the learned Subordinate Judge, Sivakasi in I.A.No.1 of 2022 in O.S.No.103 of 2015, dated 22.08.2022.

2.The petitioner is the plaintiff in O.S.No.103 of 2015. The first defendant, namely, Dhanalakshmi is the younger sister of the petitioner's mother. Her husband Alagarsamy is the maternal uncle of the petitioner's wife Krishnaveni. Since they have no issues, they brought up the petitioner from his childhood. The above suit was filed by the petitioner herein/plaintiff for the relief of partition. In the event, if the petitioner is not entitled for the relief of partition, the petitioner has sought for mandatory injunction to demolish the building in S.No. 27/1. Pending the suit, the petitioner filed an interlocutory application



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in I.A.No.1 of 2022 under Order 26 Rule 9 of Civil Procedure Code, for appointment of Advocate Commissioner and the same was dismissed by the trial Court. Aggrieved over the same, the present Civil Revision Petition is filed.

3. The learned counsel appearing for the petitioner submits that the suit in O.S.No.103 of 2015 was filed by the petitioner, for the relief of partition with regard to the suit schedule properties in S.No. 28/2C and S.No.27/1 and for an alternate relief of mandatory injunction. The petitioner's father has purchased a land in S.No.28/2C to an extent of 52 cents, out of which, he sold 35 cents to third parties and he is in possession of the remaining 17 cents. On 09.05.2003, the first defendant executed a registered Will in favour of the petitioner, in respect of 12 cents in S.No.28/2C. Believing the Will executed by the first defendant, the petitioner has put up certain constructions in both the suit schedule properties in S.No.27/1 and 28/2C. Now, the first



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defendant has taken a stand that she sold the first suit schedule property to the sixth defendant. However, the second suit schedule property in S.No.27/1 is the petitioner's absolute property. In order to identify the house property, which lies in S.No.28/2C and S.No.27/1, the appointment of Advocate Commissioner is essential. Hence, the petitioner filed the above application. However, without appreciating the same, the trial Court has dismissed the application stating that the application has been filed after seven years and also it is for the purpose of collecting evidence. Hence, the order of the trial Court is liable to be set aside.

4.The learned counsel appearing for the respondents submits that the application for appointment of Advocate Commissioner was filed by the petitioner after seven years from the date of institution of the suit and therefore there is no necessity for appointment of Advocate Commissioner. Moreover, the application



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was filed only for collecting the evidence and therefore, the trial Court has rightly dismissed the application. Hence, there is no reasons to interfere with the order of the trial Court.

5.In reply, the learned counsel appearing for the petitioner submits that the sixth defendant has filed the written statement only on 14.03.2022 and thereafter only, the petitioner has filed the application for appointment of Advocate Commissioner. Hence, the order of the trial Court needs interference.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.The petitioner claims that he is the absolute owner of the suit second schedule property in S.No.27/1. With regard to the suit first schedule property in S.No.28/C, the first defendant has executed a



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Registered Will in favour of the petitioner on 09.05.2003 and based on Will, the petitioner has put up certain constructions in S.No.28/2C as well as in S.No.27/1. Therefore, in order to establish that the buildings are in both the survey numbers, he has filed the application for appointment of Advocate Commissioner, after filing of the written statement by the sixth defendant on 14.03.2022. In order to ascertain the real physical features of the suit schedule properties, the appointment of Advocate Commissioner is necessary.

8.In view of the above, the impugned order passed by the learned Subordinate Judge, Sivakasi in I.A.No.1 of 2022 in O.S.No.103 of 2015, dated 22.08.2022 is hereby set aside. The trial Court is directed to appoint an Advocate Commissioner and also directed to dispose of the suit as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.



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9. With the above direction, this Civil Revision Petition is

allowed. No costs.

03.01.2023

Index : Yes / No.

Internet : Yes / No.

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Note: Issue order copy on **05.01.2023**.

To

The Subordinate Court, Sivakasi



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B.PUGALENDHI, J.

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Order made in
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