



CRP.No.848 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.848 of 2020
and
CMP.No.4529 of 2020

M.Dhanam

... Petitioner

Vs.

1.S.Sugavanum
2.S.Bagyalakshmi
3.Poongodi
4.Mohanasundram
...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 learned Principal Subordinate Judge, Coimbatore passed in IA.No.131 of 2018 in OS.No.104 of 2018 dated 07.08.2019.

For Petitioner : Ms.P.Manish
for Mr.I.Abrar Mohamed Abdullah

For Respondents : Mr.A.S.Baradhi for R1 & R2
R3 & R4 – served- No appearance



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ORDER

Aggrieved by an order appointing Advocate Commissioner to measure the properties of the plaintiff and the defendants with the help of Surveyor, the third defendant has come up with this Revision.

2. The respondents 1 & 2 filed a suit seeking declaration of title and permanent injunction against the petitioner and the other respondents. Pending suit, the application has been filed by the respondents 1 & 2 seeking appointment of an Advocate Commissioner to measure the property with the help of a Taluk Surveyor, note down the physical features and file a report with the Surveyor's plan and report. The said application was allowed by the Court below by directing the Advocate Commissioner to measure the suit properties with the help of a Taluk Surveyor after fixing the boundary stones with reference to the title documents of the respective parties in the layout. Aggrieved by the same, the petitioner is before this Court.



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3. The learned counsel for the petitioner submitted that the parties are neighbours and he filed a suit for mandatory injunction in OS.No.1135 of 2012 seeking removal of a building portion put up by the respondents 1 & 2 by encroaching the petitioner's property, which is lying on the eastern side properties of the respondents 1 & 2. In the said suit filed by the petitioner earlier an Advocate Commissioner was appointed and he measured the property with the help of a Taluk Surveyor and filed a report on 08.04.2015. In the Advocate Commissioner's report it was pointed out that the respondents 1 & 2 had encroached a portion of the petitioner's property. Therefore, it is the submission of the learned counsel for the petitioner that already the properties were measured by the Advocate Commissioner with the help of a Surveyor. Hence, the present application filed by the respondents 1 & 2 seeking measurement of the property again is unnecessary.

4. A perusal of the Advocate Commissioner's report filed in the suit by the petitioner would indicate that both the petitioner and the



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respondents 1 & 2 are not having the extent of the property purchased by them. There is a shortage of extent in respect of properties of both the parties as per the measurement mentioned in the respective title documents. It is not known how the Advocate Commissioner mentioned that a portion of the petitioner's property had been encroached by the respondents 1 & 2 who are the prior purchaser. It is not in dispute that both the parties are claiming title from the same person. It is seen from the records that both the petitioner and the respondents 1 & 2 are claiming right under the common owners Pappathi and Yuvaraj. The sale deed in favour of the respondents 1 & 2 was anterior to the date of purchase by the petitioner.

5. In such circumstances, in order to resolve the dispute between the parties it is better to measure the properties of both the parties with reference to the title documents and the lay out plan, if any, by fixing the boundary stones. The Court below passed the impugned order directing the Advocate Commissioner to fix boundary stones of the properties of both the petitioner and the respondents 1 & 2 and then measure the property with reference to the title deeds and lay out plan. The said exercise would certainly



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help the Court below to resolve the dispute between the parties and decide the

suit. Therefore, I do not find any illegality or irregularity in the order passed

by the Court below and accordingly, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

24.01.2024

Index : Yes / No

Internet : Yes / No

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To

The Principal Subordinate Judge, Coimbatore.



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S.SOUNTHAR , J.

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