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CRP.No.699 of 2022

In the High Court of Judicature at Madras

Reserved on: 28.02.2024

Delivered on : 03.06.2024

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

**C.R.P.No.699 of 2022
and C.M.P.No.3559 of 2022**

Chinnappan

... Petitioner

-Vs-

Mohanraj

... Respondent

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, challenging the order and decretal order dated 03.01.2022 passed in I.A.No.1 of 2021 in O.S.No.100 of 2018 on the file of Subordinate Court, Paramathy.

For Petitioner : Mr.R.Ezhilarasan

For Respondent : No appearance.

ORDER

This Civil Revision Petition is filed by the revision petitioner/1st defendant as against the order passed in I.A.No.01/2021 in O.S.No.100/2018



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dated 03.01.2022, whereby, the learned Judge dismissed the petition seeking appointment of advocate commissioner.

2. The respondent herein is the plaintiff in O.S.No.100/201⁸ and the revision petitioner is the 1st defendant. The suit is for specific performance of a sale agreement for a consideration of Rs.7,00,000/-. The revision petitioner/1st defendant filed written statement and stated that the suit property is a coconut grove; the third defendant was a dealer in coconuts. There was business relationship between the revision petitioner and the third defendant. During the account taking time, it was found that the revision petitioner was due to pay a certain sum of money to the third defendant and that as a security for repayment, he had executed a General Power of Attorney in favour of the third respondent. Using the same, the third defendant had executed a sale deed in favour of the plaintiff.

3. The learned counsel for the revision petitioner/1st defendant would submit that the plaintiff/respondent claims that the property is worth more than Rs.7,00,000/- and it is mentioned as consideration. In order to prove the actual value of the property and how the sale consideration is worked out, the 1st defendant filed I.A.No.1 of 2021 to appoint Advocate Commissioner for



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inspecting the suit schedule property, to ascertain how many coconut trees are there, the age of the trees and to file the report. That apart, to survey the length, breadth of the R.C.C. Roof house mentioned in the suit property and whether there is brick roof house, well and borewell and to file a report on the same. According to the 1st defendant, appointment of advocate commissioner is very much necessary to find out the actual value of the property as there are differences found in the nature of the land and the description of the property mentioned in the agreement.

4. The plaintiff filed counter in the said IA and stated that the value of the property includes the trees available in the land and the 1st defendant has not properly understood the contents of the agreement and sought to dismiss the I.A.

5. The learned Judge, trial court, after hearing both sides, dismissed the said IA, holding that if there are coconut trees in the suit property, accounts for the said property can be submitted as documents. Further, to prove that there is house, well, borewell and electric motor, the same may be proved by producing witness on their side. As such, to collect evidence, the 1st defendant cannot seek for appointment of advocate commissioner. The learned Judge



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further pointed out that the trial court can gather evidence through the parties to the litigation and therefore the same cannot be entrusted to the advocate commissioner to gather evidence. The learned Judge further held that the issue before the court is as to whether the suit for specific performance is to perform the contract stated in the sale consideration or to find out as to whether the execution of the said agreement is towards loan and whether the 1st defendant is ready and willing to perform his part of contract. The learned Judge on such findings, dismissed the I.A. seeking appointment of advocate commissioner.

6. The learned counsel for the revisioner petitioner/1st defendant would submit that the I.A., has been filed to note down the physical features to ascertain the value of the property and the same cannot be proved by way of oral or documentary evidence. Unless the 1st defendant has established the case at the time of trial, then the substantial justice of the 1st defendant will be seriously affected.

7. In spite of notice served on the respondent/plaintiff and the learned counsel entered appearance, there is no representation on the side of the respondent.



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8. A perusal of records would go to show that there was business transaction taken place between the third defendant and the first defendant. The third defendant was a dealer in coconuts. The 1st defendant who owns the land had some due amounts to be paid to the third defendant and for that amount, as a security for repayment, the 1st defendant had executed a General Power of Attorney in favour of the third defendant. Using the said General Power of Attorney, the third defendant had executed a sale deed in favour of the plaintiff. According to the 1st defendant, the suit property consists of brick roof house, well, borewell, electric motor pumpset, coconut trees and so the sale consideration amount of Rs.7,00,000/- is not the correct value of the property. To find out the actual value of the suit property, the 1st defendant sought for appointment of advocate commissioner to measure the length and breadth of the suit property and to ascertain the number of trees, its age etc. According to the 1st defendant-revision petitioner herein, without arriving at the actual value of the suit property, the third defendant entered into agreement of sale with the plaintiff and the 1st defendant is not in a position to perform his part of contract as the actual value of the suit property is not arrived at in the agreement of sale in respect of the suit property. Therefore, for finding out the actual value of the suit property, appointment of advocate commissioner is very much necessary.



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9. It is now too well settled that Advocate Commissioner can be appointed even in a suit for bare injunction. The purpose of appointing an Advocate Commissioner in a case was explained in ***[Kandipalayam Rajavaikkal Siru Vivasaiygal Neeretu Prasana Sangam Vs.Nanjay Edayar Vivasaiygal Sangam by its President, N.M.Mayandi Gounder]*** reported in ***2017 2 CTC 404***. The relevant portion in the judgement is extracted hereunder :-

"It is obvious to note down here that the present case be equated with the other cases cited above. Insofar as the present case is concerned, this Court would like to place it on record that the provisions of Order XXVI Rule 9 CPC envisages that in any suit in which the court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, the court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the court. The intention of the legislators is that elucidating any matter in dispute by way of helping the Court which deems a local investigation is absolutely necessary and proper. "

10. In view of the above discussion, this Court holds that the Court below ought to have appointed an Advocate Commissioner to conduct a survey, measure the suit property and note down its physical features. Accordingly, in the interest of justice, this court directs the learned Judge, trial court to pass



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orders appointing advocate commissioner within a period of six weeks from the date of receipt of a copy of this order.

11. In the result, the impugned order passed in I.A.No.1 of 2021 dated 03.01.2022 is set aside. This civil revision petition is allowed with a direction to the learned Judge, trial court as indicated supra. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

nvsri

To

- 1.The Sub Judge, Subordinate Court, Paramathy/
- 2.The Section Officer, V.R.Section, High Court, Madras.

J.NISHA BANU, J.

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