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C.R.P.No.936 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CRP.No.936 of 2021 and
CMP.No.7581 of 2021

D.Kumar

... Petitioner

Vs.

1.Surgi Devi
2.Minor Teenusri
3.Minor Achoot
4.The Sub-Registrar
Tiruttani
Tiruvallur

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 22.12.2020 passed in I.A.No.615 of 2018 in O.S.No.142 of 2014 by the Hon'ble District Munsif, Tiruttani.

For Petitioner	: Mr.S.Mohan
For Respondents 1 to 3	: M/s.L.Dhamodaran
For respondent 4	: Mr.V.Jeeva Giridharan Addl. Govt. Pleader(CS)

ORDER

The revision petition is filed challenging the order passed by the Court below dismissing the application filed by the petitioner seeking appointment of



Advocate Commissioner to inspect the suit property, measure the same and file a report noting down the encroachments if any.

2. The petitioner herein filed a suit seeking declaration of his title over suit B schedule property and for permanent injunction to restrain the respondents 1 to 3 from alienating the suit B schedule property. The petitioner also sought for mandatory injunction directing the respondents 1 to 3 to remove the 1st floor wall of their building which was built on the suit B schedule property.

3. According to the petitioner, he is an absolute owner of the suit A schedule property having purchased the same under registered sale deed dated 17.06.2010 from its owners P.Ramachandran and R.Leelarani. It is also averred by the petitioner that as per his title documents, he is the owner of Southern wall of his property and the same is described as B schedule in the plaint. The respondents, without having any manner of right over the B schedule property, had put up construction on the southern wall of the petitioner which was described as B schedule property and therefore, the



petitioner is constrained to file a suit for the above said reliefs.

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4. Pending the suit, the petitioner filed an application for appointment of Advocate Commissioner to measure the suit property and the property of the respondents on the southern side of the suit property and find out the extent of encroachment by the respondents over the suit B schedule property. The said application was resisted by the respondents on the ground that earlier, respondents preferred a suit for injunction against the petitioner and in that earlier suit, two Advocate Commissioners' reports were filed and hence, the appointment of Advocate Commissioner is not at all necessary in the present suit.

5. The Trial Court, on considering the averment of the petitioner as well as the respondents, came to the conclusion that in view of the availability of two reports filed in earlier suit between the parties, there is no need for appointment of another Advocate Commissioner in this suit and consequently dismissed the petition. Aggrieved by the same, the petitioner is before this Court.



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6. The learned counsel for the petitioner submitted that the petitioner sought for mandatory injunction for removal of the construction made by the respondents encroaching the portion of the suit B schedule property and hence, the exact measurement of the encroached portion is absolutely necessary to resolve the dispute between the parties.

7. The learned counsel for the respondents vehemently opposed this revision on the ground that earlier, Advocate Commissioner visited the property twice and filed two reports in the earlier suit for injunction filed by respondents and hence, the appointment of Advocate Commissioner in the present suit is not at all necessary. The learned counsel also submitted that Advocate Commissioner cannot be appointed to enable a party to gather evidence and appointment of Advocate Commissioner in a subsequent suit is not at all necessary. In support of his contentions, the learned counsel of the respondents relied on following judgments:-

i) ***Chinnan Vs Marappan*** reported in ***(2004)1 M.L.J.651***.



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ii) *D.Kuttiyappan and others Vs Meenakshiammal Polytechnic Unit of M/S.Meenakshiammal Trust represented by its Managing Trustee,A.H.Radhakrishnan and another reported in (2005)4 CTC 676.*

iii)*Chandrasekaran and others Vs V.Doss Naidu reported in (2005) 3 M.L.J.473.*

iv)*Chinnathambi and others Vs Anjalai reported in (2007)1 M.L.J.513.*

v) *Elango Vs Kasthuri reported in (2009) 5 CTC 706.*

8. The petitioner herein filed a suit for declaration of his title over suit B schedule wall and for injunction restraining the respondents 1 to 3 from alienating the suit B schedule property. He also sought for mandatory injunction directing the respondents 1 to 3 to remove the 1st floor wall of their building which was built on suit B schedule property. When the petitioner seeks removal of alleged encroachment made by the respondents, the exact measurement of the encroached portion is absolutely necessary to resolve the dispute between the parties. As per the plaint averment, the respondents have



encroached B schedule wall and put up their 1st floor wall on B schedule wall.

In these circumstances, it may not be possible for the petitioner to enter the property of the respondent and measure the exact encroachment made over the suit B schedule property. Hence, the only way open to the petitioner is to seek appointment of Advocate Commissioner to measure the properties of both the parties with reference to their title deeds and file a report pointing out the encroachments, if any. Therefore, when the petitioner is not in a position to give a correct extent of the encroachment made on his property owing to the construction made by the respondents over the suit B schedule wall, the appointment of Advocate Commissioner is absolutely necessary to find out the exact measurement of encroachment, if any, made by the respondents. Earlier, in the suit of for injunction filed by the respondents, Advocate Commissioner visited the suit property and filed his report. The reports filed in the earlier suit are produced in the typed set of papers filed by the respondents dated 07.07.2021. The earlier reports have not been filed based on the measurement made with reference to the title documents of respective parties. Therefore, the Advocate Commissioner's report and plan filed in earlier injunction suit by the respondents may not be useful to resolve the dispute in the present case. In



C.R.P.No.936 of 2021

these circumstances, the order passed by the Court below dismissing the application for appointment of Advocate Commissioner to measure the properties of both the parties is liable to be set aside.

9. The application filed by the petitioner in I.A.No.615 of 2018 is allowed by directing the Court below to appoint an Advocate Commissioner directing him to measure the properties of both the parties with reference to their title deeds and find out the encroachments, if any, in the B schedule property and file a report with exact measurement of the alleged encroachment.

10. Accordingly, the Civil Revision Petition stands allowed with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

02.01.2024

Index : Yes / No
Internet : Yes / No
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To

The learned District Munsif, Tiruttani.



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S.SOUNTHAR , J.

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