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C.R.P.No.2304 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28..08..2024

Coram

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Civil Revision Petition No.2304 of 2024

and

C.M.P.No.12141 of 2024

Pappammal (Died)

R.Krsna Murtii

..... Petitioner

-Versus-

R.R.Jagadeesan

..... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the impugned order dated 03.02.2024 passed by the learned Subordinate Judge, Perambalur, in I.A.No.8 of 2023 in O.S.No.155 of 2017.

For Petitioner : Mr.R.Krsna Murtii
[Party-in-Person]

For Respondent : Mr.G.Baskar

ORDER

This civil revision petition arises against an order dated 03.02.2024 made in I.A.No.8 of 2023 in O.S.No.155 of 2017 by the learned Subordinate Judge,



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Perambalur.

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2. The suit in O.S.No.155 of 2017 has been filed for declaration of title and for consequential relief of injunction or in the alternative for recovery of possession. The cause of action for the suit is that on 24.06.2016, the deceased plaintiff-Pappammal got to know that the defendant on 15.02.2007 obtained a sale deed in his favour when all that she wanted to do was to redeem a mortgage.

3. According to the plaintiff, she had mortgaged the suit property with Indian Overseas Bank at Jamal Mohammed Branch, Tiruvannamalai. As the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (also known as the SARFAESI Act) had been initiated, she alleged that the defendant had taken her for redemption of the mortgage. Under the guise of redeeming the mortgage, the defendant got a sale deed executed in his favour.

4. Even on the date of execution of the sale deed, the deceased plaintiff-Pappammal seems to be a lady of advanced age of nearly 82 years. She alleges that she got to know about the sale deed only on 10.05.2016 when the defendant asserted his ownership over the property. Thereafter, she issued a suit notice on 14.05.2016 and filed the suit for the aforesaid reliefs.



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5. On being served with the summons, the defendant entered appearance in the suit and filed a detailed written statement. The matter was pending consideration for trial.

6. The civil revision petitioner-R.Krsna Murtii, who appears as party in person would plead that due to the advanced age of his mother-Pappammal, he moved an application for appointing him as the Power of Attorney. The said application was allowed. Thereafter, the plaintiff-Pappammal had passed away on 10.01.2020. The power of attorney, being the son of Pappammal, the sole plaintiff, on the death of the his mother wanted to come on record. That application was dismissed by the learned Subordinate Judge and confirmed by this court in a revision. It was taken to the Supreme Court of India in Special Leave Petition in S.L.P.(C) No.13332 of 2021. Leave was granted and the appeal was numbered as Civil Appeal No.4832 of 2020. It finally came to be allowed on 21.07.2022. By that order, the civil revision petitioner was brought on record as the legal representative of the deceased plaintiff-Pappammal.

7. He came to know that on 23.04.2021, the defendant had entered possession of the property and demolished the building on the suit schedule mentioned property. He would assess the damage at Rs.12.00 lakhs (approx). In order to note down the fact that the building on the suit property had been



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demolished, he took out an application for appointment of an Advocate Commissioner. The said application was resisted by the defendant by filing a counter. The learned Judge came to a conclusion that the petition is not maintainable and consequently dismissed the same. Hence, the revision.

8. Heard the civil revision petitioner/party-in-person and Mr.G.Baskar, learned counsel appearing for the respondent.

9. The narration of the aforesaid facts would go to show that the suit originally presented was for declaration of title and for injunction or in the alternative, recovery of possession. In such a proceedings, the question of appointment of Advocate Commissioner would normally not lie, unless and until, there is a dispute in respect of identity of the property. However, here is the situation where pending the application to bring himself on record as the legal representative of the deceased plaintiff - Pappammal, the allegation is that the defendant has pulled down the superstructure.

10. A careful perusal of the counter no where states that the defendant had not demolished the superstructure. Whether the superstructure as shown in the suit schedule mentioned property exists or not, is a matter which necessarily would have to be gone into at the time of trial.

11. The law of this land is very clear that it is not open to a party to a



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litigation to take the law into his own hands and forcibly alter the situation that exists on the date of presentation of the lis. See **Midnapur Zamindari Company v. Naresh Narayan Roy** (1924 XX LW 770, 775) The civil revision petitioner/party-in-person had sought to be impleaded himself by way of an application in I.A.No.1 of 2020. The said application came to be dismissed by the learned Subordinate Judge on 29.03.2021. It was during this interregnum, it is alleged that the building was pulled down on 23.04.2021.

12. In a suit for declaration of title, the court is empowered to grant the relief of damages, in case, it comes to a conclusion that the plaintiff had been forcibly dispossessed of the property pending the litigation. In fact, the court has the power even in a suit for injunction to grant the relief of recovery of possession, if the plaintiff had been dispossessed after the suit had been presented. When such is the power of the court, in case the suit is decreed, it can certainly grant damages, of course, subject to payment of court-fees by the plaintiff at a later date, if it comes to the conclusion that the plaintiff was in possession of the property and he had been forcibly dispossessed of the property pending the litigation.

13. Under the clear terms of Order XXVI Rule 9 of CPC, a court is empowered to appoint an Advocate Commissioner for the purpose of



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assessment of damages. Whether it was the defendant who damaged the property or any third party, can certainly be gone into at the time of trial.

Further, since there is a dispute that the building has not been demolished, by appointing an Advocate Commissioner and obtaining a report, a clear picture would emerge in the proceedings.

14. In the light of the above discussion, the order dated 03.02.2024 passed in I.A.No.8 of 2023 in O.S.No.155 of 2017 by the learned Subordinate Judge, Perambalur is set aside. The learned trial Judge shall appoint an Advocate Commissioner, who shall be accompanied by a qualified Engineer to assess the damages, if any. The Advocate Commissioner being appointed by the learned trial Judge shall file his report to the court within the time to be specified by the learned trial Judge. The civil revision petitioner/plaintiff shall bear the costs of such appointment.

In the result, the civil revision petition is allowed with the above directions. No costs. Consequently, connected CMP is closed.

Index : yes / no
Neutral Citation : yes / no

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Note: The registry is directed to upload this order forthwith.



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To

1.The Subordinate Judge, Perambalur, Perambalur District.

V.LAKSHMINARAYANAN.J.,

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