



WEB COPY



CRP.No.910 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRP.No.910 of 2023

and

CMP.No.6797 of 2023

A.Athiyammal

...

Petitioner

Vs.

T.Shanmuga Sundar

...

Respondent

PRAYER : This civil revision petition has been filed under Article 227 of Constitution of India against the fair and decreetal order dated 16.11.2022 made in I.A.No.1 of 2020 in O.S.No.41 of 2022 on the file of the Sub-Ordinate Court at Katpadi.

For Petitioner

... Ms.Chitramaragatham

For Respondent

... Mr.K.Mohanamurali

ORDER

The civil revision petition has been filed against the fair and decreetal order dated 16.11.2022 made in I.A.No.1 of 2020 in O.S.No.41 of 2022 on the file of the Sub-Ordinate Court at Katpadi.



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2. The learned counsel appearing for the petitioner submitted that the petitioner is defendant and the respondent is plaintiff in O.S.No.41 of 2022 on the file of the Subordinate Court, Katpadi. The respondent/plaintiff filed the suit against the petitioner/defendant with the following prayer:

“(a).directing the defendant to execute and register the sale deed in favour of the plaintiff, at the plaintiff's expenses receive the balance amount of Rs.64,000/- and directing the defendant to deliver the possession of the schedule mentioned property to the plaintiff and in case the defendant is reluctant to deliver possession of the suit property, the same may be effected through process of law.

(b).In case the defendant does not come forward to execute and register the sale deed in favour of the plaintiff, this Hon'ble Court may be pleased to execute and register the sale deed in favour of the plaintiff at the plaintiff's expenses, on behalf of the defendant and deliver possession of the schedule mentioned property to the plaintiff.



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3. Further, the learned counsel for the petitioner contended that in the sale agreement, the particulars of building were not mentioned. In order to note down the physical features in the disputed property, an advocate commissioner has to be appointed. In this regard, the petitioner /defendant filed a petition under Order XXVI Rule 9 CPC, which was dismissed by the trial Judge by passing the impugned order. Hence, challenging the same, the present civil revision petition has been filed.

4. The learned counsel appearing for the respondent/plaintiff supported the order of impugned and submitted that there is no reason to interfere with the impugned order passed by the trial Court and pleaded to dismiss the civil revision petition.

5. I have considered the matter in the light of the submission made by the learned counsel on either side and perused the materials available on record.



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6. On Perusal of the records, it is noticed that the respondent/plaintiff filed a suit in O.S.No.41 of 2022 on the file of the Subordinate Court, Katpadi, against the petitioner/defendant for the abovesaid prayer. The petitioner is the owner of the property and it is not disputed that the respondent is a stranger to the petitioner and the petitioner has not executed any sale agreement in favour of the respondent and in the plaint schedule properties, school building is constructed and there is a compound wall constructed around the suit property that has to be elucidated by local inspection through an Advocate Commissioner, hence, seeking to appoint an advocate commissioner but the trial Court by passing the impugned order dismissed the petition on 16.11.2022 on the ground that on perusal of the sale agreement, it was noticed that the plaint schedule property is only Nanja land and the patta number is 9137 & 9097 and no building was mentioned in the schedule property.

7. Under these circumstances, the Court felt that no need to appoint an advocate commissioner to make a visit the suit property and note down



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the building in the suit property. So it has to be proved before the Court by letting an evidence and the parties cannot be permitted to collect the evidence for his case. Hence, I find no infirmity or illegality in the order passed by the trial Court and I find no merit in the civil revision petition.

In the result, the civil revision petition is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
sms

31.01.2024

To
The Sub-Ordinate Court at Katpadi.



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V.SIVAGNANAM ,J.

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