



C.R.P.No.1568 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

C.R.P.No.1568 of 2024 and
C.M.P.No.8448 of 2024

V.Sekar

... Petitioner

Vs.

1.S.Krishna
2.K.Archana

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order, dated 23.11.2023 in I.A.No.2/2021 in O.S.No.149/2021 on the file of the II Additional District Judge, Salem, allow the revision petition.

For Petitioner	:	Mr.S.Kalyanaraman for Mr.R.S.Mangala Kumar
For R1 & R2	:	No Appearance

ORDER

The petitioner/plaintiff filed a petition under Order XXVI Rule 9 of C.P.C. in I.A.No.2 of 2021 in O.S.No.149 of 2021 before the learned II Additional District Judge, Salem to appoint Advocate Commissioner to note down the physical features of the suit property with the help of Surveyor and



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Village Administrative Officer and to file a report with plan. The learned II Additional District Judge, Salem, by impugned fair and decreetal order, dated 23.11.2023 dismissed the petition. Against which, the present civil revision petition is filed.

2.Despite service of notice and name printed in the cause list, no representation for the respondents either in person or by their respective counsel. Hence, this Court decides to dispose of this revision based on the materials placed.

3.The learned counsel for the petitioner/plaintiff submitted that the petitioner filed suit for declaration and permanent injunction against his son and daughter-in-law who are respondents herein and defendants 1 and 2. The petitioner constructed resort under the trade name of 'The Sky Roca'. Adjoining to the property, the 1st respondent is having property situated in survey No.77/2 measuring 2.24 acres and in survey No.76 measuring 6.02 acres. The 1st respondent has got this property along with other properties under the gift settlement deed, dated 28.01.1980 executed by the 1st



respondent's adopted father Rangiah Chettiar when the 1st respondent was a minor aged about one year. At that time, the petitioner, natural father appointed as guardian. When the 1st respondent was aged three years, his adopted father Rangiah Chettiar died, therefore, the petitioner acted as guardian for the 1st respondent. The 1st respondent gave power of attorney in favour of the petitioner on 07.03.1997 to deal with the defendants' property. The petitioner while constructing hotel and resort utilized some portion of the land of the 1st respondent for the purpose of approach road to his resort and for parking yard. This approach road was necessary to connect to the main road. The petitioner and the 1st respondent entered into exchange of deed on 13.09.2006 for exchanging the property. The petitioner's property described as A schedule and the respondents' property described as B schedule. Hence, A schedule property was to be given in lieu of the B schedule property from the respondents/defendants. The petitioner leased out the hotel property to M/s.GRT Hotels and Resorts Private Limited by entering into license agreement and they are now carrying on the business. In the meanwhile, there was some misunderstanding between the petitioner and the 1st respondent.



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4.The learned counsel further submitted that the 1st respondent became envious on the growth of the business and on ill-advice of others, had gone behind the agreement earlier, started giving trouble to the petitioner. Hence, the petitioner filed the above suit. In the meanwhile, on 16.12.2020, the respondents settled the property in favour of his wife/2nd respondent which was agreed to be given to the petitioner which necessitated the petitioner to file suit. The contention of the petitioner is that the appointment of the Advocate Commissioner is very much necessary to identify and find out physical features of the suit property since there are overlapping of the petitioner's property as well as the properties of the respondents and also for the purpose of hotel, approach road and the parking bay. To earmark these physical features with the present working and usual condition, the appointment of Advocate Commissioner is necessary. This has been wrongly construed by the lower Court. The finding of the lower Court that the appointment of Advocate Commissioner is for gathering of evidence, is not proper. The learned counsel for the petitioner drew the attention of this Court to the impugned order and documents filed along with the revision and submitted that the finding of the



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lower Court is not proper.

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5.Considering the submissions and on perusal of the materials, it is seen that the boundaries of the suit properties are well recorded in the respective documents. Since the property developed into hotel and resorts and road has been laid, there would be some changes in the physical features. For a better appreciation and to render justice, the appointment of Advocate Commissioner is essential.

6.In view of the above, the impugned fair and decreetal order, in I.A.No.2 of 2021 in O.S.No.149 of 2021 passed by the learned II Additional District Judge, Salem is set aside. Accordingly, this civil revision petition stands allowed. Consequently, connected civil miscellaneous petition is closed. No costs.

25.06.2024

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes

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M.NIRMAL KUMAR, J.

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To

The II Additional District Judge,
Salem.

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