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C.R.P.No.1635 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-12-2024

CORAM

THE HONOURABLE MR JUSTICE N. SATHISH KUMAR

CRP No.1635 of 2022

and

C.M.P.No.8165 of 2022

N.VIGNESH

S/O. M.K. NATRAJ, RESIDING AT 516, UTHUKULI
ROAD, KUNNATHUR, VILLAGE, AVINASHI TALUK.

PETITIONER

Vs

MARIAMMAL

W/O. PALANISAMY, REPRESENTED BY HIS POWER
AGENT, T.P. MURUGESAN, RESIDING AT 124/64,
GOBI MAIN ROAD, KUNNATHUR.

RESPONDENTS

Petition filed under Article 227 of the Constitution of India, praying to set aside the order and decretal order dated 21.01.2022 made in I.A.No.262 of 2021 in O.S.No.9 of 2020 on the file of the learned District Munsif cum Judicial Magistrate, Uthukuli, Tiruppur District.

For Petitioner:

Mr.S.KAITHAMALAI KUMARAN

For Respondent(s):

Mr.K.GОВI GANESAN for R1

No Appearance for R2



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ORDER

WEB COPY Challenging the order dated 21.01.2022 dismissing the application filed for appointment of an Advocate Commissioner to note down the physical features in the suit property, the 1st defendant has come forward with the present revision petition.

2. The 1st respondent is the plaintiff, and the 2nd respondent is the 2nd defendant in the suit. The suit has been filed for a decree and judgment (i) declaring that the plaintiff is the absolute owner of 3/4th share in the suit property and directing the defendants to surrender the vacant possession of the suit property; (ii) for a preliminary decree for partition dividing the suit property into 4 equal shares and allotting 3 such shares to the plaintiff and to put the plaintiff in possession of her shares so allotted to her; for damages at the rate of Rs.2,000/- per year from the date of the suit till the date of delivery of possession of the suit property. According to the plaintiff, the suit property and other properties were originally owned by Palani Moopan. On the death of Palani Moopan, his sons partitioned the properties owned by their father among themselves amicably. The suit property was allotted to the share of Mutha Moopan, son of Palani Moopan. The said Mutha Moopan was in exclusive possession and enjoyment of the share allotted to him. The said Mutha Moopan had four sons (i) Marimuthu, (ii) K.M.Murugesan, (iii) Rakkiappa Nadar and



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(iv) Vaiyappa Nadar. The said Mutha Moopan died intestate. After the death of Mutha Moopan, his sons were in absolute possession and enjoyment of the entire extent of lands. While so, on 20.03.1980, three of them out of (i) Marimuthu, (ii) K.M.Murugesan, (iii) Rakkiappa Nadar and (iv) Vaiyappa Nadar, along with their minor children, sold the entire extent of 0.36 acres to the plaintiff's vendor, Kaliappan, through a registered sale deed dated 20.03.1980 and the said Kaliappan, in turn, sold the same property to the plaintiff through a registered sale deed dated 25.08.1994. Therefore, the plaintiff has become entitled to 3/4th share and the 1st defendant is entitled to the remaining 1/4th share in the suit property. The 1st defendant had trespassed into the property in the last week of December, 2012. Hence, the suit.

3. It is the stand of the 1st defendant that he is the owner of the property and he has been in exclusive possession and enjoyment of the same for more than the statutory period.

4. Pending suit, the 1st defendant sought the appointment of an advocate commissioner. This application was stiffly opposed by the plaintiff. The court below, upon considering the arguments on either side, dismissed the application on the ground that the plaintiff himself admitted the possession of the 1st defendant in the suit property. Therefore, the advocate commissioner as sought by the 1st defendant could not be appointed, as it would only help the



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1st defendant to collect the evidence to prove his possession over the suit property.

5. Heard both sides.

6. The learned counsel for the revision petitioner/1st defendant would submit that the purpose of seeking the appointment of Advocate Commissioner was not to collect the evidence, and it was only to note down the physical features in the suit property.

7. Per contra, the learned counsel for the 1st respondent/plaintiff would contend that having pleaded adverse possession, the 1st defendant sought the appointment of an advocate commissioner only to collect the evidence to show that he is in possession of the suit property for more than the statutory period and also to show that he made several improvements to the property.

8. This court has considered the rival submissions carefully.

9. Though an Advocate Commissioner cannot be appointed to collect evidence to prove one's possession in the suit property, considering the nature of the dispute involved, this court is of the considered view that to find out whether any improvements have been made in the suit property, noting down the physical features of the property is necessary, and the appointment of Advocate Commissioner for that purpose will not in any way cause prejudice to the other side, and, in fact, it will enable the court to arrive at a just conclusion,



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and the parties may also prove their case on the basis of such physical features available on the ground. Therefore, the order passed by the learned District Munsif cum Judicial Magistrate dismissing the application for appointment of Advocate Commissioner on the ground that the purpose of the application was to collect the evidence to prove the possession, is not sound in the eye of law and the same has to be necessarily set aside. The learned District Munsif cum Judicial Magistrate shall appoint an Advocate Commissioner in the matter within a period of one month from the date of receipt of a copy of this order with a direction to the Advocate Commissioner concerned to inspect the suit property and note down the physical features of the property. The learned District Munsif cum Judicial Magistrate shall specifically instruct the Advocate Commissioner not to collect any evidence with regard to the time of the possession of the 1st defendant, etc.

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

Index : yes / no
Neutral Citation : yes / no
kmk

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To



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1. The District Munsif cum Judicial Magistrate, Uthukuli, Tiruppur District.

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N.SATHISH KUMAR.J.,
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