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CRP.(PD).No.1805 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.04.2024

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THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.(PD).No.1805 of 2022

and CMP.No.9217 of 2022

Sengottuuvan

...Petitioner/Respondent/Defendant

Vs.

1.Pattabiraman

2.Jothilakshmi

3.Latha

4.Meenaambika

...Respondents/Petitioners/Plaintiffs

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the order and decreetal order passed in I.A.No.492 of 2021 in O.S.No.227 of 2019 on the file of the I Additional District Munsif Court, Virudhachalam dated 29.03.2022.

For Petitioner :M/s.Avinash Wadhini

for Mr.V.Raghavachari

For Respondents :Mrs.R.Meenal

ORDER

This Civil Revision Petition has been filed as against the order passed in I.A.No.492 of 2021 in O.S.No.227 of 2019 on the file of I Additional District Munsif Court, Virudhachalam dated 29.03.2022, wherein the respondents herein have filed petition before the trial Court for appointment of Commissioner under Order 26 Rule 9 CPC to inspect and measure the suit



properties with the help of qualified surveyor and file his report and plan. The said petition was allowed by the trial Court, aggrieved by the same, the present petition has been filed by the petitioner/respondent.

2.The brief facts of the petition filed before the trial Court are as follows:-

The petitioners are the plaintiff in the suit and they filed suit as against the respondent/defendant for declaration of title and permanent injunction of the suit properties. Originally the suit properties measuring an extent of 1.75 acres in the northern side out of 9.92 acres in old S.F.No.261/1 at Iruppu Village and the same was belonged to Gopalakrishna Padayachi. The said Gopalakrishna Padayachi sold the said land to one Chinnaasamy Padayachi who is the grand father of the petitioners through sale deed dated 09.01.1970. In the sale deed, the measurement of the property was wrongly mentioned as 1 acre 66 cents instead of 1 acre 75 cents within the four boundaries mentioned in the sale deed, and the petitioners are in possession of 1 acre 75 cents. Thereafter, there was a partition in respect of item No.1 of the petition mentioned property on 20.10.1980. In the said document also, the extent of property was mentioned as 1 acre 66 cents instead of 1 acre 75 cents. The total extent of land measuring an extent of 9 acre 92 cents in S.F.No.261/1 was sub divided and the petition mentioned property was sub divided as



CRP.(PD).No.1805 of 2022

S.F.No.261/1A. The respondents are adjacent land owners of southern side of item No.1 and they attempted to encroach the property, they have no right to do so. The respondents have also filed written statement, now they attempted to encroach item No.2 of the property. Therefore, it is just and necessary to measure the suit property in S.F.No.261/1A1 with the help of the qualified surveyor. Hence, the petition.

3. The respondent filed counter stating that the petitioner does not have right over the item No.2 of the property which measuring an extent of 10 cents. Therefore, cannot seek any relief as against the item No.2 of the property. Further, the advocate commissioner cannot be appointed to collect the evidence and the petitioner has filed documents only for an extent of 1.66 acres and now they claimed 1.75 acres, thereby, they are gathering evidence through measuring the property. Therefore, the petition is liable to be dismissed.

4. Before the trial Court, no evidence was adduced on both sides and the trial Court after hearing both sides, allowed the petition and the Advocate commissioner was appointed to note down the physical features and measure the properties through qualified surveyor and to file report and plan.

Aggrieved by the said order, the respondent/defendant has filed this Civil



CRP.(PD).No.1805 of 2022

Revision Petition.

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5. The learned counsel appearing for the petitioner would contend that the respondents herein have filed suit for the relief of declaration and injunction. It is stated that the item No.1 of the property was purchased through sale deed dated 09.01.1970 by their grand father, but available extent was 1.75 acres and thereafter the forefather of the plaintiff partitioned their properties and in that deed also they only mentioned about 1.66 acres and now they are attempting to include 10 cents which was not owned by them and wants to add as item No.2 of the property by way of measuring the property. They have only right over the property with an extent of 1.66 acres through sale deed and they have no any records in respect of item No.2 of the property for an extent of 10 cents and now in order to collect the evidence through commissioner, they filed this petition. But the trial Court failed to consider the same and allowed the petition. Hence the order of the trial Court is liable to be set aside.

6. The learned counsel for the Revision Petitioner relied on the following judgments in support of his arguments :

1.R.Satyanarayana Rao and 3 others Vs.M.K.Manoharan @

K.Manoharan reported in 2000-3-L.W.787.



CRP.(PD).No.1805 of 2022

**2.P.G.Murugesan Vs. Advocates Bar Association Palcode reported in
2017 SCC Online Madras 16644.**

7.The learned counsel appearing for the respondent would contend that infact item No.1 of the property was purchased by the fore fathers of the respondents/petitioners/plaintiffs through sale deed dated 09.01.1970 and thereafter respondents predecessors partitioned the property on 20.10.1980. In both the documents, the extent was only mentioned as 1.66 acres instead of 1.75 acres. In fact from the date of purchase itself they are enjoying the property for an extent of 1.75 acres but in the deeds wrongly mentioned as 1.66 acres. Now the respondents are attempting to encroach the property and thereby in order to identify the property, the measurements are very essential. Therefore, they filed the commissioner application and the said commissioner application is not to collect the evidence but only to measure the properties and to identify the property. Therefore, the trial Court rightly allowed the application and the present petition is liable to be dismissed.

8. This Court heard both sides and perused the records. In this case, it is admitted fact that the respondents herein/plaintiffs filed the main suit for the relief of declaration and permanent injunction. According to the plaintiffs they purchased the properties through sale deed dated 09.01.1970 for an extent of



1.66 acres but in the said sale deed, the measurement was wrongly mentioned instead of 1.75 acres. Thereafter, the partition deed was entered between the parties through partition deed dated 20.10.1980, in that deed also, the extent was wrongly mentioned as 1.66 acres instead of 1.75 acres.

9. The above contentions raised by the plaintiffs/respondents herein are vehemently denied by the Revision petitioner/defendant and their contention is that they only purchased the property of 1.66 acres and now in order to grab the 10 cents of the item No.2 of the property and to collect the evidence in respect of that property, the plaintiffs filed the petition for appointment of Advocate Commissioner.

10. It is true that Advocate commissioner cannot be appointed for the collection of evidence but in this case, since the defendants/Revision petitioner herein has denied the extent of the property, it is appropriate to identify the property by way of measurement with the qualified surveyor by measuring the property with the help of surveyor and no prejudice would be caused to the revision petitioner/defendant.

11. No doubt, the trial Court can very well know about the measurement of the property from the suit records, however in order to give complete



verdict in respect of the properties, the trial Court found that advocate commissioner appointment is necessary in respect of the location of the property and to arrive at a right decision in the suit on merits, appointment of advocate commissioner is very much necessary so as to identify and to locate the list properties especially item No.2 of the property.

12. In the light of the above discussions, the order passed by the trial Court for appointing the Advocate Commissioner is to inspect and measure the properties and the object is only to identify the properties and not for collection of evidence.

13. On careful perusal of judgements cited supra by the learned counsel for the petitioner, it is clear that Advocate commissioner cannot be appointed to collect the evidence on behalf of the parties and the plaintiff has to prove his case by adducing evidence before the trial Court and also when there is no dispute as to identity of the property, the commissioner cannot be appointed. In the case on hand, the commissioner is appointed only to identify the property and to measure the property. Therefore, the reliance placed by the revision petitioner on the aforesaid case laws will not be applicable to the present facts of the case.

P.DHANABAL, J.,

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CRP.(PD).No.1805 of 2022

14. In view of the above said discussions, this Court is of the opinion that there is no infirmity found in the order of the trial Court and the trial Court order is well reasoned order and it does not warrant any interference.

15. In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

08.04.2024

Index : Yes/No
Speaking order/non-speaking order
mpa

To
The I Additional District Munsif Court, Virudhachalam.

CRP.(PD).No.1805 of 2022
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