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CRP.No.2108 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.04.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

CRP.No.2108 of 2022
and CMP.No.10893 of 2022

1. Babu
2. Ramesh

...Petitioners/Defendants

Vs.

Krishna Reddy

...Respondent/Plaintiff

PRAYER: Civil Revision Petition is filed under section 227 of the Constitution of India, to set aside the order and decree dated 23.04.2022 made in I.A.No.01 of 2022 in O.S.No.326 of 2019 on the file of the Subordinate Judge, Arakkonam.

For Petitioners :Mr.A.Gouthaman
For Respondent :Mr.G.P.Sivakumar

ORDER

This Civil Revision Petition has been filed as against the order dated 23.04.2022 passed in I.A.No.01 of 2022 in O.S.No.326 of 2019 on the file of Subordinate Judge, Arakkonam.

2. The petitioners/defendants herein have filed the said I.A before the



trial Court for appointment of Commissioner to inspect and measure the suit properties with the help of Surveyor and file report. The said petition was dismissed by the trial Court. Challenging the said order, the present civil revision petition has been filed.

3.The revision petitioners are the defendants in the suit. They purchased the suit properties for an extent of 28 cents. In the plaint, the respondent/plaintiff filed the main suit for an extent 35 cents, which is mentioned as A schedule property. The disputed 15 cents out of 35 cents is shown as B schedule property. There is no separate existence of suit property for an extent of 48 cents in survey No.502. Already the entire extent of 48 1/2 cents in Survey No.502 were sub divided as survey No.502/1 for an extent of 28 1/2 cents and survey No.502/2 for the extent of 28 cents. But the plaintiff claiming that the said 35 cents is situated to the northern side of survey No.501/19, southern side of Murugesu Naicker. But infact the said Murugesu Naicker land is in S.No.502/14F.

(ii) The 2nd petitioner/2nd defendant has raised paddy crops in the extent of 28 1/2 cents in dry survey No.502/1 keeping it as one piece. In this extent, the respondent/plaintiff is claiming that property as if 50 cents is available. Therefore, the petitioners/defendants pray for appointment of



advocate commissioner for the inspection of the suit property to note down the physical features and measure the same.

4. According to the respondent/plaintiff, the 2nd petitioner/2nd defendant never raised any paddy crops in the extent of 28 1/2 cents in survey No.502/1. The plaintiff's father purchased the property on 14.06.1950. Therefore, the appointment of commissioner is not warranted.

5. Before the trial Court, no oral or documentary evidence adduced on either side. The trial Court after hearing both sides, dismissed the I.A. As against the said impugned order revision petitioners/defendants filed this civil revision petition.

6. The learned counsel for the petitioners/defendants would contend that the respondent/plaintiff filed suit for the relief of permanent injunction. In order to identify the property which is in dispute between both parties and to note down the physical features, the appointment of Commissioner is necessary. But the trial Court erroneously dismissed the I.A holding that there is no dispute in respect of the property. Therefore, the order passed by the trial Court is liable to be set aside.

7. The learned counsel for the respondent/plaintiff would contend that



there is no dispute in respect of the identification of the property. The respondent's/plaintiff's predecessors purchased the property for an extent of 35 cents out of 50 cents. Whereas, the petitioners/defendants purchased the property in the year 1986 for an extent of 28 1/2 cents. Since already major portion of the plaintiff's predecessor purchased the properties, the petitioners/defendants cannot purchase to the extent of 28 1/2 cents. While so, the plaintiff filed suit and there is no dispute in respect of the identification of the property. The dispute is only in respect of extent. Therefore, the appointment of Advocate Commissioner is no way helpful to decide the case. The trial Court correctly dismissed the petition by holding that there is no dispute in respect of identification of the property. Therefore, the order passed by the trial Court is to be confirmed the present revision petition is to be dismissed.

8. This Court heard both sides and perused the records.

9. The petitioners herein being the defendants filed I.A before the trial Court for appointment of commissioner stating that there is a dispute in respect of the extent of the property and also for the identification of property. According to the defendants there is a dispute in respect of the identification of the property. Therefore, the appointment of advocate commissioner is



necessary to decide the case.

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10. According to the respondent/plaintiff, there is no dispute in respect of the identification of the property and the dispute is only in respect of the extent.

11. The trial Court also after hearing both sides dismissed the I.Aby holding that there is no dispute in respect of the identification of the property. The real dispute is in respect of the extent of the property. Therefore, the parties can prove their extent through their documents.

12. This Court also perused the records and there is no dispute in respect of the identification of the property. Both of them claiming the title over the property through their respective documents. Therefore, the trial Court can decide the issue based on the documents filed by the parties. Since there is no dispute in respect of the identification of the property and the dispute is only about the extent, the appointment of Advocate Commissioner is no way helpful to decide the case. The dispute in respect of extent could be decided by adducing oral and documentary evidences by the parties concerned. Therefore, the order passed by the trial Court is in order and no perversity and infirmity found in the order of the trial Court and it does not



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warrant interference. Therefore, this civil revision petition has no merits and it deserves to be dismissed.

13. Accordingly, this Civil Revision Petition is dismissed. No costs.
Consequently, connected miscellaneous petition is closed.

18.04.2024

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

To
The Subordinate Judge, Arakkonam.



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P.DHANABAL, J.,

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