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C.R.P.No.2556 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.R.P.No.2556 of 2022

and

C.M.P.No.13072 of 2022

R. Vinayagam,
Represented by his Power Agent,
A.M.Mohammed Ali
S/o. Mohammed Haniba,
Residing at Door No. 1,
Royal Nagar, Karumbukadai,
Coimbatore - 641 008.

...Petitioner

Vs

Mohammed Eshak

...Respondent

Prayer: Civil Revision Petition filed under Section 227 of Constitution of India praying to set aside the order dated 23.02.2022 made in I.A.No. 702 of 2019 in O.S.No. 83 of 2017 pending on the file of the Principal District Munsif Court, Tiruppur District.

For Petitioner : Mr.Sam Jayaraj Houston

For Respondent : Mr.A.Saravanan



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ORDER

This Civil Revision Petition is filed challenging the order passed in I.A.No. 702 of 2019 in O.S.No. 83 of 2017 on the file of the Principal District Munsif, Tiruppur, dated 23.02.2022, wherein the petitioner has filed the petition before the Trial Court for appointment of Commissioner and the same was dismissed. As against the said order, the present Civil Revision Petition is filed.

2. According to the petitioner, he is the plaintiff in the main suit and he filed the suit for the relief of mandatory injunction and for recovery of possession. The petitioner is the owner of the property in site No. 88 at S.F.No.339 of Chemmandampalayam Village, Mangalam in Tiruppur District. The respondent encroached the property on 03.11.2016 and also the plaintiff has taken steps to survey the S.F.No.339. At the time, the respondents prevented the petitioner and the surveyors to measure the property. The respondent filed the written statement stating that he purchased the property in S.F.No. 338. Therefore, there is a dispute in respect of identification of the property and to find out the exact encroachment, the appointment of Advocate



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Commissioner is necessary.

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3. According to the respondent, the main suit itself is not maintainable and only to extract money from the respondent, the suit is filed. The respondent constructed the house long back and now he is in possession and enjoyment of the same. The petitioner has no valid title. The site No. 88 in Ramya Garden was purchased by Chitra Begam by way of sale deed in the year 1999. The respondent purchased the said property from Chitra Begam through sale deed dated 15.10.2003 and he constructed a house in the year 2003 itself. The petition is not maintainable for the reason it is filed without any cause of action, the petitioner has filed the commission application to grab the property of the respondent. Hence the petition is liable to be dismissed.

4. Before the Trial Court, no oral or documentary evidence adduced on both sides. The Trial Court after hearing both sides, dismissed the petition.

5. The learned counsel appearing for the petitioner would contend that the petitioner is the plaintiff in the main suit and filed petition before the Trial



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Court for appointment of Commissioner to note down the physical features and to measure the suit property with the help of qualified surveyor. But the Trial Court dismissed the petition by holding that case of the petitioner has to be proved by way of documents and possession of the property cannot be decided through the appointment of Commissioner. But the petitioner filed the main suit for relief of mandatory injunction and for recovery of possession. Therefore, in order to prove the encroachment, the appointment of Commissioner to measure the property is essential. But the Trial Court has failed to consider the same and dismissed the petition. Therefore, the order passed by the Trial Court is liable to be set aside.

6. The learned counsel for the respondent would contend that the main suit itself is not maintainable and the respondent purchased the property in the year 2003 through sale deed and he also constructed the house in the year 2003 itself. He has been in possession and enjoyment of the property. Now only to extract money from the respondent, the main suit was filed by the plaintiff. Therefore, Petition is liable to be dismissed. The Trial Court also after elaborate discussion decided that the possession of the property cannot



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be decided through appointment of Commissioner. Therefore, the order passed by the Trial Court is in order. Hence, the present Civil Revision Petition is liable to be dismissed.

7. Heard both sides and perused the materials available on record.

8. On perusal of the records, it is seen that the petitioner herein has filed the main suit before the Trial Court for the relief of Mandatory Injunction and for recovery of possession. During the pendency of the suit, the petitioner has filed the petition for appointment of Commissioner to note down the physical features and for measuring the property with the help of surveyor. According to the petitioner, there is a dispute in respect of identification of property and the portion of property was also encroached by the respondent. In order to ascertain the encroachment and to elicit the truth and to ascertain the exact location of the suit property, the appointment of commissioner is necessary. Therefore, considering the nature of suit and prayer made in the suit and to find out the encroachment, the appointment of Commissioner is very much essential. But the Trial court failed to consider the same and held that, the



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case of the petitioner has to be proved through oral and documentary evidences and to find out the possession, the Commissioner cannot be appointed. It is well settled law that to find out possession, the Commissioner cannot be appointed and the plaintiff has to prove his case through oral and documentary evidences, but at the same time when the suit is filed for the relief of mandatory injunction and for recovery of possession, in order to find out the encroachment and to identify the property, the appointment of Advocate Commissioner is essential.

9. According to the petitioner, the respondent encroached the suit property therefore in order to find out the portion of alleged encroachment, the appointment of Commissioner is essential. The said aspects has not been considered by the Trial Court. In view of the said reasons, the order passed by the Trial Court is liable to be set aside. The Trial court is directed to appoint Advocate commissioner to note down the physical features and also to measure the property with the help of qualified surveyors and the Commissioner proceedings have to be concluded within two months from the



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date of receipt of copy of this Order. Thereafter, the Trial of the main case has to be completed within four months.

10. With the said directions, this Civil Revision Petition is allowed.

Consequently connected Civil Miscellaneous petition is closed. No costs.

25.06.2024

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Index : Yes/No

Internet : Yes/No

Citation : Yes/No

To

The Principal District Munsif Court, Tiruppur



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P.DHANABAL,J

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