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C.R.P. No.2632 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2024

CORAM

THE HONOURABLE Mr. JUSTICE P.DHANABAL

C.R.P. No.2632 of 2022

and C.M.P. No.13502 of 2022

Deepak Asti S/o. Late Dr. A. Subramanyam Raju

...Petitioner /

Respondent / Defendant

Vs.

1. R. Jayalakshmi W/o. Late Dr. P.N. Parameshwaran

2. P.J. Deepa devi, D/o. Late Dr. P.N. Parameshwaran

3. P.J. Divya Devi D/o. Late Dr. P.N. Parameshwaran

4. Visalakshmi M/o. Late Dr. P.N. Parameshwaran

.... Respondents /

Petitioners / Plaintiff.

PRAYER: Civil Revision Petition is filed under section 227 of the

Constitution of India, to set aside the fair and decreetal order dated

19.07.2022 made in I.A. No.4 of 2022 in O.S. No.35 of 2020 on the file of

I Additional District Court, Tiruvallur.

For Petitioner : Mr.V. Lakshmi Narayanan
for M/s. R. Munusamy

For Respondents : Mr. M. Sriram

ORDER

The Civil Revision Petition has been preferred as against the order passed in I.A. No.4 of 2022 in O.S. No.35 of 2020 on the file of I Additional



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District Court, Tiruvallur dated 19.07.2022, wherein the respondents herein have filed a petition before the Trial Court for appointment of Commissioner and the same was allowed. As against the said order, the present civil revision petition is filed.

2. According to the petitioner, the respondents have filed the main Suit for relief of declaration and consequential relief of permanent injunction in respect of the Suit property. During the pendency of the Suit, the Plaintiffs have filed the petition for appointment of Commissioner to measure the property with the help of Taluk Surveyor and to note down the physical features of the property. The Trial Court allowed the application to measure the property other than the Suit property and also directed to pay Commissioner fee by both the parties. Moreover, the Suit has been filed as against the dead persons. The appointment of Commissioner is only for purpose of gathering and collecting the evidence. The Suit property is situated in Survey No.210/2 of Kattupakkam Village. The total extent of the land in Survey No.210/2 Acres 5.42 cents. Thereafter, it was subdivided and now it is subdivided as Survey No.210/35. Even as per the patta produced by the petitioner, the Survey number is mentioned as 210/34 and not 210/35. The extent of the property also 0.14.5 hectare only, but the Plaint refers to 27.5



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cents. The 4th petitioner is no more even on the date of filing of the petition and the same was also brought to the knowledge of the Trial Court, but no steps was taken. Therefore, the order passed by the Trial Court is liable to be set aside.

3. According to the respondents, they filed the main Suit and they are the Plaintiffs in the main Suit. They filed a petition for appointment of Commissioner for measuring the property with the help of Taluk Surveyor. Originally, the Suit property is situated in Survey No.210/2. Originally, one Sivaprakash Naicker owned 5 acres and 42 cents of land comprised in Survey No.210/2 and he gifted the property to his grand children through a Settlement Deed dated 03.12.1959 . The 1st Plaintiff purchased 27.5 cents comprised in Survey No.210/2 through a Sale Deed dated 19.12.1988 and she has been enjoying the property. The 1st Plaintiff also possessed the properties in Survey Nos.210/1 and 211 adjacent to Survey No.210/2. The 1st Plaintiff executed a Settlement Deed to her husband through a Settlement Deed dated 27.02.1990 to an extent of 8400 sq. ft. out of 27.5 cents. Her husband died on 02.04.2002 leaving behind the Plaintiffs as legal heirs. The defendant attempted to trespass into the Plaintiffs' property and the same was thwarted by the plaintiffs. The defendant is claiming an extent of North to South 23



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feet on the Western side and 21 feet Northern East West 66 feet on both sides and North to South 49 feet and East to West 66 feet on the Northern and Western sides respectively. Therefore, the property has to be measured with the assistance of Taluk Surveyor. The Trial Court after considering the same, appointed a Commissioner and directed to measure the property. Therefore, the order passed by the Trial Court is in order and the present civil revision petition is liable to be dismissed.

4. The learned counsel appearing for the petitioner would contend that the respondents have filed the main Suit for the relief of declaration and permanent injunction in respect of the Suit property comprised in Survey No.210/2 and the same was subdivided as Survey No.210/35 for an extent 27.5 cents. But the Trial Court, directed to measure the properties which are noway related to the Suit property i.e., Survey Nos.210/2 and 210/5 and also directed to pay Commissioner fee by both the parties. Further, the 4th Plaintiff died even before the filing of the petition, but the Trial Court failed to consider the same. Filing of the Commissioner petition is nothing but to collect the evidence. Therefore, the order passed by the Trial Court is liable to be set aside.



5. The learned counsel appearing for the respondents would contend that the respondents, being the Plaintiffs, filed a Suit for the relief of declaration and permanent injunction and the petitioner attempted to trespass into the Suit property and he claims right over one portion of the Suit property. Therefore, in order to identify and to measure the property, they filed the commissioner application and the Trial Court after elaborate discussion, correctly appointed the Commissioner to measure the Suit property and the adjacent properties. Therefore, the order passed by the Trial Court is in order and the present revision petition is liable to be dismissed.

6. Heard both sides and perused all the materials available on record.

7. It is an admitted fact that the respondents, being the Plaintiffs, have filed a Suit for declaration and permanent injunction in respect of the property comprised in Survey No.210/2 [new Survey No.210/35] to an extent of 27.5 cents. That was mentioned as 'A' schedule property and the 'B' schedule property is all that piece and parcel of 'A' Schedule to an extent of North South 21 feet on the western side and 23 feet on the Eastern side, East West 66 feet on both sides on the northern corner and North South 49 feet and East West 66 feet on the western corner on the Plaintiffs' 'A' schedule property. But the



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Trial Court, while allowing the Commissioner petition, directed to measure the property in Survey No.210/2 and 210/5 on the basis of the title deeds placed by the parties and also fixed remuneration to Rs.10,000/- and directed to pay Commissioner fee by both the parties. It is well settled law that without any dispute, the Court cannot direct the Commissioner to measure other than the Suit property and the Court has to order to measure the property of Suit schedule alone. Since there is no dispute with respect to other properties and the dispute is in respect of one portion of the suit property. Therefore, it is the duty of the Court to appoint a Commissioner to measure the Suit property alone. Therefore, the Commissioner has to inspect and measure the property only with respect to the Suit property i.e, Survey No.210/2 [new Survey No.210/35] to an extent of 27.5 cents. As far as the Commissioner fee is concerned, since the Plaintiffs filed the Commissioner application to appoint Commissioner, they only have to bear the Commissioner fee and the respondent / defendant need not pay Commissioner fee. Therefore, the said order passed by the Trial Court in respect of Commissioner fee is set aside and only the Plaintiffs have to pay the entire remuneration to the Advocate Commissioner.

8. As far as the contention raised by the learned counsel appearing for the petitioner that, the 4th Plaintiff died and the same was informed to the Trial



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Court, but the Trial Court did not consider the same is concerned, there is no record produced before this Court. Even in the application filed before this Court itself, the petitioner has not mentioned about the death of the 4th Plaintiff and by impleading the 4th Plaintiff as 4th petitioner, this petition has been filed. Therefore, it is for the Trial Court to decide the same based on the records produced by the parties in respect of death of the 4th Plaintiff. Even assuming that the 4th Plaintiff is died, the entire application for appointment of Commissioner cannot be dismissed. The death of the 4th Plaintiff is noway affected the petition for appointment of Commissioner. The petitioner is at liberty to agitate before the Trial Court and the Trial Court has to decide the same on merits in accordance with law.

9. Therefore, the order passed by the Trial Court in I.A. No.4 of 2022 in O.S. No.35 of 2020 is modified to the effect that Mr. J. Babu, Advocate is appointed as an Advocate Commissioner to inspect and measure the suit property comprised in Survey No.210/2 [new Survey No.210/35] to an extent of 27.5 cents with the help of a Taluk Surveyor and the Commissioner shall inspect and measure the Suit property after due notice to the parties with the help of Poonamallee Taluk Surveyor and the Commissioner fee shall be fixed by the Trial Court to be paid by the petitioners / Plaintiffs in the application



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seeking appointment of Advocate Commissioner.

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10. With the above modifications, the Civil Revision Petition is ordered
No costs. Consequently, the connected miscellaneous petition is closed.

03.07.2024

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

To

The I Additional District Court, Tiruvallur.



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P.DHANABAL, J.,

mjs

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