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C.R.P.(PD).No.1057 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.1057 of 2021
and C.M.P.Nos.8422 and 8425 of 2021

M.Raja

... Petitioner

VS

1.S.Renuka Devi

2.S.Harini

3.S.Harshavarthini

4.Minor S.SriHari

Rep. by its Mother and
Natural Guardian Mrs.S.Renuka Devi,
C/o.Late SU.Chidambaram,
[Amended as per memo dated 02.03.2021]

5.K.Chellammal

6.A.Kannan

... Respondents

[Amended as per memo dated 02.03.2021]

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to allow the above Civil Revision Petition and set aside the



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order and decreetal order dated 27.07.2020 (as amended dated 02.03.2021) in I.A.No.1 of 2019 in O.S.No.208 of 2015 passed by the IV Assistant City Civil Court, Chennai.

For Petitioner : Mr.A.Murali
for M/s.N.Parameswari

For R1 to R4 : Mr.R.Nandakumar
for M/s.C.Rekha Kumari

For R5 : No Such Person

For R6 : Exparte

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below allowing the petition for appointment of Advocate Commissioner to locate the suit property with the help of Taluk Surveyor.

2. The respondents 1 to 5 herein filed a suit for declaration of title and recovery of possession. They also prayed for permanent injunction restraining the defendants from alienating the suit property.

3. Since there was dispute with regard to identity of the suit property, at



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the instance of the respondent, earlier an Advocate Commissioner was appointed. He measured the properties of the petitioner and respondents with the help of Surveyor and filed a report. It was observed by the Advocate Commissioner that the property of the respondents 1 to 5/plaintiffs was not identified with the description found in the plaint schedule. She further observed that the suit property could be located by measuring the property with reference to the FMB sketch and by procuring the adjacent survey numbers. Therefore, the instant application has been filed by the respondents 1 to 5/plaintiffs seeking to reissue of the warrant to the Advocate Commissioner. The said application was allowed and Advocate Commissioner was directed to inspect the suit property and measure the same with the help of Taluk Surveyor and note down the encroachments in the suit property and file a report. Aggrieved by the same, the petitioner is before this Court.

4. The learned counsel appearing for the petitioner submitted that unless the suit property is measured with reference to the title deeds of both the parties and revenue documents like FMB sketch, the identification of the



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suit property may not be possible. The learned counsel further submitted that terming the petitioner as an encroacher, the Court below directed the Advocate Commissioner to note down the encroachments in the suit property. Such a direction would cause serious prejudice to the petitioner at the time of final disposal of the suit.

5. A perusal of earlier report filed by the Advocate Commissioner would indicate that the suit property has not been properly located. Therefore, in order to locate the suit property, reissue of warrant to the Advocate Commissioner is absolutely necessary. However, the Court below ought not to have issued a direction as if, there is encroachments in the suit property by the defendants. Therefore, it is clarified that the Court below should reissue the warrant to the Advocate Commissioner with a direction to identify the suit property by measuring the same with reference to the title documents of both the parties and FMB sketch. While measuring the property, if any encroachment is found in the suit property, the same shall also to be demarcated with exact measurements.



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6. With this observation, the Civil Revision Petition stands disposed of.

No costs. Consequently, the connected civil miscellaneous petitions are closed.

12.01.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

The IV Assistant City Civil Court,
Chennai.



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S.SOUNTHAR, J.

dm

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