



WEB COPY



C.R.P.(PD).No.2406 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).No.2406 of 2021
and C.M.P.No.18288 of 2021

Muralichandra Reddy

... Petitioner

VS

M/s. NCL Homes Pvt Limited.,
having its office at
Sy.No.88, NCL Ganga Plaza,
Opp. RTA Office,
Petbazheerabad,
Hyderabad – 560 007.

Previously at
Room No.11004,
Raghava Rathna Towers,
Chirag Ali Lane,
Abidg, Hyderabad – 560 001.

Represented by its
Special Power of Attorney Holder,
Mr.R.Pilla Reddy,
S/o. Rama Reddy,
Chithanapalli Village,
Nellore Post, Hosur Taluk,
Krishnagiri District

... Respondent



C.R.P.(PD).No.2406 of 2021

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the Fair and Decreetal order dated 21.09.2021 made in I.A.No.2 of 2021 in O.S.No.156 of 2016 on the file of Additional Subordinate Court, Hosur, Krishnagiri District.

For Petitioner : Mr.C.Prabakaran

For Respondent : Ms.R.Poornima

ORDER

The Civil Revision Petition is filed challenging the order passed by the Court below appointing an Advocate Commissioner to inspect the suit property and note down the physical features of the suit property with the help of qualified Surveyor and file a detailed report along with plan at the instance of the respondent/plaintiff.

2. The respondent herein filed a suit seeking declaration of their title and for permanent injunction. According to the respondent, the suit property



C.R.P.(PD).No.2406 of 2021

was purchased by them under the registered Sale Deed dated 22.12.2009 from previous owners Channiran and others. The vendors of the respondent purchased the suit property by way of Sale Deed dated 29.12.2006 from one Kempamma and others. The suit property was purchased by the respondent with an intention to gift the suit property to the Temple called Goopalli Muneshwara Swamy Temple. It was further averred in the plaint that the petitioner/defendant based on the wrong description in his title document attempted to trespass into the suit property. Therefore, the respondent was constrained to file a suit for declaration of title and permanent injunction.

3. The suit was resisted by the petitioner herein by filing a written statement wherein the petitioner specifically disputed the boundary description found in the Sale Deed in favour of the respondent/plaintiff. Therefore, both the petitioner/defendant as well the respondent/plaintiff dispute the boundary description in their respective title documents.

4. The respondent/plaintiff filed an application for appointment of Advocate Commissioner to measure the suit property with the help of



qualified Surveyor and note down the physical features. The said application was filed at the stage of DW.1 cross. The said application was resisted by the petitioner herein on the ground that application was filed by the respondent only for the purpose of collection of evidence. It was also stated that the petitioner herein filed the written statement as early as 06.04.2016 denying the boundary description in the title document of the respondent. However, no steps have been taken by them seeking appointment of Advocate Commissioner for several years and now, when the matter is at the stage of DW.1 cross, the instant application has been filed only to protract the proceedings.

5. The Trial Court on consideration of submission made by both the parties, came to the conclusion that when there is a dispute with regard to the boundary description, area and location of the property, it would be better to appoint an Advocate Commissioner to note down the physical features with the help of qualified Surveyor. Aggrieved by the same, the petitioner is before this Court.



6. The learned counsel appearing for the petitioner submitted that though the boundary description found in the respondent's title document was specifically disputed by the petitioner in the written statement as early as 06.04.2016, the instant application has been filed by the respondent in the year 2021, after a delay of 5 years with the intention to protract the proceedings. The learned counsel further submitted that the appointment of Advocate Commissioner cannot be permitted to collect evidence.

7. As mentioned earlier, both the plaintiff and defendant in their respective pleadings disputed the boundary description found in the title document of either side. When there is a serious controversy with regard to the boundary description in the title document of respective parties, it would be appropriate to appoint an Advocate Commissioner to measure the suit property with a help of qualified Surveyor and find out the actual boundaries. It is also made clear that the suit property shall be measured with reference to the title document of both the plaintiff and defendant. The suit property covered by the title document of both the parties shall be measured with the help of qualified Surveyor and a report shall be filed with plan certified by



C.R.P.(PD).No.2406 of 2021

the Surveyor before the Court below. The Advocate Commissioner is also directed to note down the physical features found in the suit property. This

Court feels it would be appropriate to appoint Advocate Commissioner to measure the suit property with reference to the title document of both the parties to resolve the real controversy involved in the suit and it will enable the Court below to dispose of the suit in more satisfactory manner. Therefore, I do not find any illegality or irregularity in the order passed by the Court below. Accordingly, the same is confirmed with a modification that the suit property shall be measured by the Advocate Commissioner with the help of qualified Surveyor with reference to the title document of both the parties.

8. The learned counsel for the petitioner submits that pending civil revision petition, the Advocate Commissioner already visited the suit property and filed a report without measuring the property with reference to the title document of the petitioner. Therefore, the Court below is directed to reissue the warrant to the Advocate Commissioner to visit the suit property again and to measure the suit property with reference to the title document of both the parties as indicated above.



C.R.P.(PD).No.2406 of 2021

9. Accordingly, the Civil Revision Petition is dismissed with the above modification. No costs. Consequently, the connected civil miscellaneous petition is closed.

04.01.2024

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

To

The Additional Subordinate Court,
Hosur, Krishnagiri District.



WEB COPY



C.R.P.(PD).No.2406 of 2021

S.SOUNTHAR, J.

dm

C.R.P.(PD).No.2406 of 2021

04.01.2024