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C.R.P.(PD)Nos.3334 & 3349 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

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THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)Nos.3334 & 3349 of 2024
and CMP.Nos.17905 & 17979 of 2024

1.Komathi

2.Chinnapaiyan

3.Mari

.. Petitioners in both CRPs

Vs.

1.K.Ramasamy

2.K.Govindaraji

3.Munusamy

.. Respondents in

CRP(PD)/3334/2024

.. Respondent in

CRP(PD)/3349/2024

Common Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, against the fair orders and decreetal orders dated 13.06.2024 and 05.06.2024 passed by the District Munsif, Katpadi, Vellore District in I.A.Nos.300 & 345 of 2021 in O.S.Nos.5 and 48 of 2015.

In both CRPs:

For Petitioners : Mr.R.Anbalagan

COMMON ORDER

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These two Civil Revision Petitions have been filed by the defendants in O.S.No.5 of 2015 and O.S.No.48 of 2015, presented by the plaintiffs claiming declaration of their easementary right over the B schedule mentioned property, which they would claim as a Battai.

2.The plaintiffs would plead that the defendants, who had purchased the properties after them, had denied their respective right over the suit Battai.

3.On service of summons, the defendants entered appearance and filed a detailed written statement. It has been specifically pleaded by them that there exists no Battai as described as ABCD in the suit plaint to reach VIT road.

4.Since the existence of the Battai was asserted by the plaintiffs and denied by the defendants, the plaintiffs took out two applications in I.A.No.300 of 2021 in O.S.No.5 of 2015 and I.A.No.345 of 2021 in O.S.No.45 of 2015, seeking for appointment of an Advocate Commissioner to



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examine the suit property.

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5.The learned Judge issued notice in both the Applications and thereafter, came to a conclusion that appointment of an Advocate Commissioner is essential. Challenging the same, the present Civil Revision Petitions.

6.Heard, Mr.R.Anbalagan. He would submit that the order of the learned trial Judge is liable to be interfered with on three grounds;

- (1) Two separate Advocate Commissioners have been appointed to inspect the same suit schedule mentioned property;
- (2) He would invite my attention to his sale deed dated 07.01.2015 to state that no Battai is shown in his schedule; and
- (3) An Advocate Commissioner cannot be appointed to collect evidence and act as an investigating agency for the plaintiffs.

7.I have carefully gone through the records and have analyzed the



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submissions of Mr.Anbalagan.

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8.Under Order 26 Rule 9 of Civil Procedure Code, an Advocate Commissioner is appointed to elicit a matter in issue. A reading of the plaint of the respective plaintiffs assert that there is a Battai running in two directions. The defendants in the written statement have clearly and categorically taken a stand that there is no such Battai. The issue that the Court would have to decide in this case is whether there is an existence of a Battai as described in the suit schedule. In addition to the oral and documentary evidence, the existence of Battai can be found out by appointment of an Advocate Commissioner. If the Advocate Commissioner visits the schedule mentioned property and files a report, it would help the Court to conclude whether there is a Battai as alleged by the plaintiffs.

9.In so far as the argument of Mr.Anbalagan that two separate Advocate Commissioners have been appointed to examine the same schedule mentioned property, I have to hold that since they are two different suits, reports necessarily would have to be separate ones. A report of all Advocate



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Commissioner in one suit cannot become evidence in other suit. It is in these circumstances that the learned Judge has appointed two Advocate Commissioners.

10. In so far as the argument of Anbalagan that there is no Battai in the sale deed executed in favour of the defendants on 07.01.2015, I have to necessarily refer to the plaint averments. In the suit in O.S.No.48 of 2015, the specific averment of the plaintiff is that as per the settlement deed dated 01.04.2013, executed in favour of the plaintiff, the deed specifically mentions about the existence of the Battai. Similarly, in the suit in O.S.No.5 of 2015, the plaintiff alleges that the Battai has been described in the sale deed dated 02.11.2005. The sale deed of the defendants is subsequent to the sale deed of the plaintiffs. Therefore, the fact that the existence of Battai is not mentioned in the defendants sale deed can be a ground to be agitated at the time of trial. It cannot be a ground to deny the appointment of an Advocate Commissioner.

11. The Supreme Court in ***Haryana Waqf Board Vs. Shanti***



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Sarup[(2008) 8 SCC 671], has stated that whenever there is a dispute in identity or existence of a particular fact, it can be verified by appointment of an Advocate Commissioner. I would apply this verdict to the facts of this case.

12.Apart from that, if the Commissioner visits the site and submits a report, he is not acting as an investigating agency as stated by Mr.Anbalagan but, is only acting as an Officer of the Court to verify about the existence of the pathway. In any event, the defendants are not prejudiced in any way, by an Advocate Commissioner being appointed.

13.Therefore, I do not find any reasons to admit the Civil Revision Petitions and accordingly, the same stand dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

21.08.2024

Tsg
Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No



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The learned District Munsif, Katpadi, Vellore District.

V. LAKSHMINARAYANAN, J.

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