



C.R.P.(PD).No.2895 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(NPD).No.2895 of 2021
and
C.M.P.No.20864 of 2021

L.Muniyappa

... Petitioner

VS

1.Lagumaiah

2.Nagaraju

3.Basavaraju

... Respondents

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal orders dated 31.08.2021 passed in I.A.No.01 of 2020 in O.S.No.162 of 2019 (In CNR No. TNK105-001087-2019) on the file of the Principal Sub Court, Hosur.

For Petitioner : Mr.P.Mani

For Respondents : Mr.R.Jayaprakash

ORDER



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WEB COPY The Civil Revision Petition is filed challenging the order passed by the Court below dismissing the petition filed by the revision petitioner seeking appointment of the Advocate Commissioner to note down the physical features in the suit property.

2. The petitioner herein filed a suit seeking declaration of title, recovery of possession and removal of superstructures found in the suit property. He also sought for declaration that Gift Deed dated 29.01.2018 executed by 1st respondent in favour of respondents 2 and 3 was null and void.

3. The respondents herein filed a written statement wherein they claimed that total extent of the land available in suit Survey No.32 was 8.04 acres and the Gift Deed relied on by the petitioner covers only 2.10 acres of land. The remaining lands had been enjoyed as a joint family property by forefathers of both the petitioner and respondents. The respondents also claimed oral partition in the family and allotment of the suit property in their favour. In the written statement, it was also specifically mentioned by the



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respondents that the property gifted to petitioner under Gift Deeds dated 08.01.1957 and 22.09.1958 were totally different properties and the present suit property was not subject matter of the Gift Deeds executed in favour of the petitioner-L.Muniyappa and one Narasimma Naidu.

4. The petitioner filed an application seeking appointment of the Advocate Commissioner to note down the physical features of the suit property and the same was dismissed by the Court below on the ground that the petitioner has to prove his case by leading oral and documentary evidence. Therefore, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner submitted that when it was specifically denied by the respondents in the written statement that the suit property were not subject matter of Gift Deeds executed by the petitioner, it has become absolutely necessary to find out whether the suit property is covered by the Gift Deeds executed in favour of the petitioner. Therefore, the appointment of Advocate Commissioner to identify the suit property with reference to the Gift Deeds relied on by the petitioner would be useful to the



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6. The learned counsel appearing for the respondents submitted that the petitioner-L.Muniyappa and another were given 2.10 acres of land in the suit survey number under a Gift Deed and the property covered by the said Gift Deed is entirely different properties from suit property. Therefore, absolutely there is no necessity to appoint the Advocate Commissioner to note down the physical features of the suit property.

7. In the impugned order, the Court below noted one of the main question to be in the suit was whether suit property belonged to petitioner/plaintiff by the Gift Deed executed by Appi Naidu in the year 1957 and 1958. It is the specific case of the respondents in the written statement that suit property is not covered by Gift Deeds in favour of plaintiff. In such circumstances, it has become absolutely necessary to appoint the Advocate Commissioner to identify the suit property with reference to the Gift Deeds dated 08.01.1957 and 22.09.1958 relied on by the petitioner and respondents. The same will minimize to oral and documentary evidence to be let in by the



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parties in the case. Therefore, the impugned order dated 31.08.2021 passed in

I.A.No.01 of 2020 in O.S.No.162 of 2019 (In CNR No. TNK105-001087-

2019) on the file of the Principal Sub Court, Hosur is set aside and the Civil

Revision Petition stands allowed. No costs. Consequently, the connected civil

miscellaneous petition is closed.

18.01.2024

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

dm

To

The Principal Sub Court,
Hosur.



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S.SOUNTHAR, J.

dm

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