



CRP. PD.No.2907 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.10.2024

Pronounced on:04.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

CRP. PD. No.2907 of 2022
and CMP. No.15798 of 2022

1.B.Subramani
2.C.K.Babu

... Petitioners

Vs

1.Krishnan
2.The Tahsildar,
Taluk Office,
Hosur.
3.Rajamma

... Respondents

Prayer: The Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 01.08.2022 made in I.A. No.02 of 2020 in O.S. No.196 of 2020 on the file of the learned Principal Sub Court, Hosur by allowing this Civil Revision Petition.

For Petitioners : Ms.K.Megala

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader



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ORDER

The plaintiffs who were unsuccessful in seeking appointment of an Advocate Commissioner for local inspection are the revision petitioners herein.

2. I have heard Ms.K.Megala, learned counsel for Mr.N.Manokaran, learned counsel for the petitioner and Mr.T.Arunkumar, learned Additional Government Pleader for the respondent.

3. The learned counsel for the petitioner would submit that the suit has been filed seeking the reliefs of declaration of title and possession and also for permanent injunction and mandatory injunction. She would further contend that the Trial Court has erroneously dismissed the Application seeking the appointment of an Advocate Commissioner on the ground that the main issue in the suit is only as to whether the suit property belongs to the family of the plaintiffs' or to the family of the vendors', the third defendant and in order to decide the said issue, it was not necessary to appoint an Advocate Commissioner to note down the



physical features and measure the suit properties.

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4. The learned counsel for the petitioner would therefore submit that the Trial Court has grossly erred in not looking into the reliefs sought for in the plaint and therefore, prayed for the Civil Revision Petition being allowed, setting aside the dismissal Order in I.A. No. 02 of 2022.

5. Per contra Mr.T.Arunkumar, learned Additional Government Pleader appearing for the respondent would submit that the Trial Court has rightly negated the prayer seeking the appointment of an Advocate Commissioner, as the trial is yet to commence in the suit and the attempt of the petitioner is in the nature of collecting evidence for proving the suit claim and the same is not permissible in law and therefore, no interference is warranted in the Order in I.A.No.2 of 2022.

6. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the records including the impugned order.

7. Admittedly the suit has been filed to declare the plaintiff's title



and possession of A Schedule property; for a declaration that the B schedule property is a common road and for a consequential permanent injunction relating to schedule B property and also for mandatory injunction pertaining to both, A schedule as well as B schedule properties by demolishing the building constructed over the same. Apart from the above reliefs, the plaintiffs have also sought for a declaration to nullify the sale deed dated 12.11.1990 in favour of the first defendant.

8. The issue as to whether the suit property belongs to the plaintiffs' family or whether it belongs to the family of the vendor's, the 3rd defendant, is only one issue in the suit. Admittedly the suit properties comprise of 2 items described as scheduled A and schedule B to the plaint. A specific relief has been sought for by the plaintiffs to declare the schedule B property is a common road. Without noticing the said specific relief prayed by the plaintiffs, the Trial Court has erroneously proceeded on the basis that the suit is only for a declaration of title and consequently, dismissed the Application seeking appointment of an Advocate Commissioner.

9. The first defendant has already filed a written statement and in



the written statement, he has denied the claim of the plaintiffs title and with regard to schedule B property, it is the case of the first defendant that the plaintiffs were never in possession and enjoyment of the same. It is further contended that the first defendant alone is in possession of the B schedule property. The second defendant-Tahsildar, has not filed any written statement. In such circumstances, the report of an Advocate Commissioner would be of invaluable assistance to the Court while trying the issues in the suit, especially pertaining to the schedule B property being alleged as a common road. The Trial Court, therefore ought to have appointed an Advocate Commissioner to get the assistance of an Officer of the Court who would only aid the Court in adjudicating the issues in a proper perspective, unfortunately, the Trial Court has dismissed the Application without noticing the nature of reliefs sought for in the suit. For the above reasons I am inclined to set aside the Order and consequently allow the Civil Revision Petition.

10. In fine, the Civil Revision Petition is allowed, the order in I.A.No. 02 of 2022 in in O.S. No.196 of 2020 passed by the learned Principal Sub Judge, Hosur is set aside. The Trial Court shall appoint an Advocate Commissioner and fix reasonable remuneration for the



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Advocate Commissioner. Consequently, connected Miscellaneous Petition

is also closed. No costs.

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Index:Yes/No

Speaking order/Non-speaking order

rkp

To

1.The Principal Sub Judge, Hosur.

2.The Tahsildar,
Taluk Office,
Hosur.

3.The Section Officer,
VR Section,
Madras High Court,
Chennai.

P.B.BALAJI, J.



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Pre-Delivery Order in
CRP. PD. No.2907 of 2022
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