



CRP No.4095 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

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THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

CRP No.4095 of 2024 &  
CMP.No.22513 of 2024

1.R.Sengottaiyan  
Mallika (Died)  
2.M.Gunasekar  
3.G.Kavitha : Petitioners

versus

P.Vijayam : Respondent

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 05.01.2024 made in I.A.No.2 of 2022 in O.S.No.126 of 2021 on the file of the District Munsif Court, Komarapalayam.

For Petitioners : Mr.A.Yogaraj

ORDER



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This civil revision petition is at the instance of the defendants.

2. O.S.No.126 of 2022 is a suit for bare injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the property by the plaintiff.

3. The plaintiff would plead that they are the owners of the property and the defendants are the strangers to the same. Yet on 27.10.2021, the defendants attempted to interfere with the peaceful possession of the plaintiff. Hence, she come forth with the suit.

4. On service of summons, the defendants filed a detailed written statement. They would plead that they purchased the property on 24.11.2017 from one N.Duraisamy Mudaliyar. According to them, the said Duraisamy had purchased the property from one Vidya on 16.12.2014. The said Vidya had obtained the possession of the property, pursuant to the judgment and decree in O.S.No.30 of 1999 on the file of the Sub Court at Sankari and took possession of the same in REP.No.27 of 2007 on 30.06.2010. The defendants would plead that after the purchase, they put up



a superstructure and have been enjoying the same.

5. The learned Trial Judge framed the issues and the matter is now listed for subsequent hearings.

6. At that stage, the defendants took out an application for appointment of an Advocate Commissioner in the said proceedings in order to point out that the allegation of the plaintiff that the property is a vacant land is false, since the defendants have put up a building, bore well and a bathroom in and over the property purchased by them. The learned trial Judge numbered the said application as I.A.No.2 of 2022 and, after receipt of a counter, proceeded to dismiss the same on 05.01.2024. Hence, the revision.

7. I have heard Mr.Yogaraj for the civil revision petitioners/defendants.

8. Mr.Yogaraj would invite my attention to paragraph No.9 of the



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written statement and argued that the allegation of the plaintiff that the property is a vacant land is false one and only in order to disprove the same, the defendants have come forth with an application for appointment of an Advocate Commissioner. He argues that there is no bar for appointment of an Advocate Commissioner in a suit for permanent injunction, when there is a dispute regarding the identity of the property.

9. I have carefully considered the submissions of Mr.A.Yogaraj and gone through the records.

10. It is true that the plaintiff has shown that the suit schedule mentioned property is a vacant land. It is the plea of the defendants that they had put up a superstructure. The defendants can always produce the records to prove that, after their purchase from one Duraisamy Mudaliar, they had put up a superstructure. This can be done by way of oral evidence like examination of contractor etc., and by way of production of documents like building plan etc.



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11. When there is no dispute regarding the identity of the suit property, an Advocate Commissioner need not be appointed. The question of Commissioner visiting the suit property and submitting a report on the plea taken by the defendants does not arise. It is for the defendants to prove the case pleaded by them and they cannot substantiate that plea by way of a report of an Advocate Commissioner.

12. In the light of the above discussion, I do not find any reason to interfere. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

**14.10.2024**

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Index : Yes/No  
Speaking Orders/Non Speaking orders  
Neutral Citation : Yes/No

To

The District Munsif Court,  
Komarapalayam.

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**V.LAKSHMINARAYANAN, J.**

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