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C.R.P.No.4297 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.4297 of 2024 &
CMP.No.23887 of 2024

1.R.Kanthimathi
2.S.Ramakrishnan

.. Petitioners

Versus

D.Premkumar

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order, dated 30.08.2024, made in I.A.No.1 of 2022 in O.S.No.129 of 2022 by the Sub Court, Thiruvottiur.

For Petitioner : Mr.R.Munuswamy

ORDER

This civil revision petition arises against an order passed by the learned Subordinate Judge at Tiruvottiur in I.A.No.1 of 2021 in O.S.No.129 of 2022 dated 30.08.2024.

2. O.S.No.129 of 2022 was originally presented before the



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Subordinate Judge at Ponneri as O.S.No.27 of 2020. On account of the creation of Subordinate Court at Thiruvottiyur, the said suit stood transferred to the file of the Subordinate Court at Thiruvottiyur.

3. The relief sought for in the suit is for declaration that the plaintiff is the owner of the schedule mentioned property and to direct the defendants to quit and deliver vacant possession of the property after removing the unauthorised constructions of a kitchen, staircase and borewell constructed by the defendants on the northern side of the plaintiff's 'C' schedule mentioned property.

4. A perusal of the plaint reveals that the entire extent of 3481 sq.ft. has been shown as 'A' schedule. The plaintiff claims that he is entitled to 2325 sq. ft. and the defendants are entitled to 1156 sq. ft., out of the total extent mentioned above. The plaintiff pleads that the defendants had encroached an extent of 181 sq. ft. in 2325 sq.ft of his holdings.

5. The defendants entered appearance and filed a detailed written statement.



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6. When the suit coming up before the learned Subordinate Judge, Thiruvottiyur, the plaintiff filed an application for appointment of an Advocate Commissioner to note down the physical features and measurements of schedules 'A' to 'D' in the plaint, along with a taluk surveyor. The said application was numbered as I.A.No.1 of 2022. Notice was ordered to the defendants. The defendants filed a counter pleading that the entire extent of 'A' schedule is not as stated by the plaintiff but consists of 3600 sq.ft. In other words, the defendants claimed that there is an additional extent available more than 3481 sq.ft., mentioned by the plaintiff. It was further submitted that there is no road by name "Srinivasa Perumal Koil 3rd Street". In fine, the plaintiff as well as the defendants seem to have varying view on the extent, lie and identification of the property.

7. Considering the petition and counter, the learned Subordinate Judge felt that if an Advocate Commissioner is appointed, it will assist the court in order to decide the matter in issue. Hence, she allowed the application.



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8. In order to prefer a revision against the said order, the defendants filed a copy application seeking for certified copy of the order. Copy was not issued with an endorsement "there is no order". Hence, I called for a report from the learned Subordinate Judge as to how when the petition and orders have been issued stating that the application stood allowed, the Registry of that court had not granted a certified copy of the fair and decreetal order. I also requested the learned Subordinate Judge to send the fair order passed by her in I.A.No.1 of 2022 in O.S.No.129 of 2022 dated 30.08.2024.

9. In compliance with the direction, the learned Subordinate Judge at Thiruvottiyur has sent a report together with the fair order. She has pointed out the mistake that has been committed by the registry of that Court and given an assurance, if the copy application is represented, the fair and decreetal order in I.A.No.1 of 2023 will be immediately furnished to the counsel for the defendants.

10. Since the original of the order is before me, I went through the same. I find that there is a dispute, as pointed out, with respect to lie,



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identity and extent of 'A' to 'D' schedule properties. The plaintiff pleads that the extent of A schedule is only 3481 sq. ft., whereas the defendants plead that it is 3600 sq.ft. Furthermore, they denied the existence of road named "Srinivasa Perumal Koil 3rd street".

11. Where there is a dispute in identity, or lie of the property and extent, the Supreme Court in *Haryana Waqf Board v. Shanti Sarup, (2008) 8 SCC 671* has held that it will be in the interest of both parties as well as the Court to get a report of the Advocate Commissioner. The learned Judge has in fact taken this view into consideration and has stated on account of the nature of the suit and the reasons stated by the petitioner, she is inclined to appoint a Commissioner, who will be assisted by a Taluk Surveyor.

12. The apprehension of Mr.R.Munuswamy is that the plaintiff is not aware of the portion of the property which he is entitled to. This can be easily addressed at the time of arguments in the suit. This is because, in case, the plaintiff does not describe the immovable property in specific terms, the Court can always take into consideration Order VII Rule 3 of the Code of Civil Procedure and pass appropriate orders in the suit. However



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for the said purpose, there is no necessity to reject the appointment of an Advocate Commissioner. This is especially when the learned Judge has felt that appointment of Advocate Commissioner will assist the court in disposal of the suit.

13. Therefore, I do not find any reason to take a different view than that was taken by the learned Subordinate Judge at Thiruvottiyur in I.A.No.1 of 2022 in O.S.No.129 of 2022 dated 30.08.2024. I make it clear that after submitting the report, the court shall follow the directions given by this Court in ***Vemba Gounder v. Poonchola Gounder, AIR 1996 MAD 347*** in particular, paragraphs 30 and 31 of the said Judgment.

14. With the above observation, this civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The Sub Court, Thiruvottiyur.



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V.LAKSHMINARAYANAN, J.

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