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C.R.P.(PD).No.4817 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD).No.4817 of 2024 &
C.M.P.No.26912 of 2022

M.Buhari

... Petitioner

-Versus-

Masjeedha Umar and

Arabi Madharasa

Represented by its trustees

1.Janab Abdul Kadhar

2.Janab Farook

3.Janab B.Basuludeen

4.Janab Jafar Sadiq

5.Janab Beer Mohammed

6.Janab Syed Ahmed Mubin

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to fair and decreetal order passed in I.A.No.1 of 2023 in O.S.No.550 of 2021 on the file of the learned III Additional District and Sessions Judge, Poonamallee.

For Petitioner : Mr.K.Dhananjayan



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ORDER

This civil revision petition arises against the order passed by the learned III Additional District and Sessions Judge, Thiruvallur at Poonamallee in I.A.No.1 of 2023 in O.S.No.550 of 2021 dated 12.07.2024.

2. O.S.No.550 of 2021 is a suit for specific performance of an agreement of sale dated 05.10.2018.

3. The case of the plaintiffs is that the defendant had entered into an agreement of sale on 05.02.2018 and had received a sum of Rs.30,40,000/- from the plaintiffs. Since he did not execute the sale deed as per the agreement, they came forth with the suit. It is a specific case of the plaintiffs that the defendant had agreed to sell the property situated at S.No.355/1 in Thirumurugan Nagar, Maduravoyal, which measures an extent of 1200 sq. ft.

4. The defendant, on service of summons, filed a written statement. According to him, what he agreed to sell was the property situated in S.No.335/2 to the same extent and not the property situated in S.No.335/1. On this and other pleadings including limitation, he sought for dismissal of the suit.



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5. Thereafter, the defendant took out an application in I.A.No.1 of 2023 seeking for appointment of an Advocate Commissioner to note down the physical features of schedule A and B properties, as given in the petition accompanying the affidavit. The purpose for seeking such an appointment was to note down that there are superstructures over the A schedule property, whereas the same has been given as a vacant land in the suit.

6. This application was resisted by the plaintiffs stating the application is not maintainable. They alleged that the possession of the B schedule property had been handed over to them subsequent to the agreement and they have also dug a borewell in the same. They alleged that the defendant/petitioner had received a sum of Rs.27,00,000/- from the plaintiffs respondents and the agreement was only with respect to A schedule and not with respect to B schedule.

7. The learned Trial Judge, after considering the affidavit and counter, came to a conclusion that appointment of an Advocate Commissioner is not necessary. He dismissed the petition, against which the present revision.



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8. I have heard Mr.Krishnan for Mr.Dhananjayan for the civil revision petitioner and have gone through the records.

9. The purpose for appointment of an Advocate Commissioner under Order XXVI Rule 9 of the Code of Civil Procedure is “to elucidate the matter in issue” in the suit. In a suit for specific performance, the issue before the Court is whether the plaintiff is ready and willing to convert the sale agreement into a sale deed and whether the plaintiff suffers from any of the personal bars under Section 16 of the Specific Performance Act.

10. In case, there is no understanding on the identity of the property, then the contract itself would stand vitiated. Whether there is a superstructure over A schedule or B schedule, as given in the petition, is absolutely irrelevant. In fact, there is only one schedule attached to the plaint. It relates to the property comprised in S.No.355/1. The petitioner, in order to obfuscate the issue, has brought in another schedule. The Court cannot appoint a commissioner for a property, which is not even a subject matter of the suit. In any event, the issue



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whether there is a superstructure over the property is alien to this suit for specific performance.

11. I do not find any reason to take a different view with a view taken by the learned Trial Judge. This civil revision petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

03.12.2024

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order

To

1.The III Additional District and Sessions Judge, Poonamallee.



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V.LAKSHMINARAYANAN, J.
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