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C.R.P. (PD) .No.5199 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD).No.5199 of 2024

and

C.M.P.No.29077 of 2024

D.Manjunathan

.. Petitioner

Vs.

1.Saraswathi

Govindan (Died)

Seeran (Died)

Dhadugan (Died)

2.Muniyamma

3.Krishnan

4.Siddan

5.Kannammal

6.Mangammal

7.Nagamma



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8.Madhesh @ Siddaraj

9.Murugan

10.Lavanya

11.Arun Kumar

12.Munammal

13.Mangammal @ Madhammal

14.Madhesh

.. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside the order dated 30.09.2024 made in I.A.No.9 of 2024 in O.S.No.32 of 1997 on the file of the District Munsif cum Judicial Magistrate, Denkanikottai.

For Petitioner : Mr.Sudhan

ORDER

This civil revision petition challenges the order passed by the learned District Munsif cum Judicial Magistrate, Denkanikottai, in I.A.No.9 of 2024 in O.S.No.32 of 1997 dated 30.09.2024.



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2.O.S.No.32 of 1997 seeks for multiple reliefs of declaration, permanent injunction and mandatory injunction against the defendants.

3.The case of the plaintiff is that she had purchased a property from one Rukmani Ammal on 24.06.1996. The defendants also purchased a property from the said Rukmani Ammal. However, taking advantage of the fact that the plaintiff being a Home maker, the defendants had encroached the properties belonging to the plaintiff and put up a construction consisting of several shops and houses. The plaintiff on coming to know of the same, filed a suit for the aforesaid reliefs.

4.Though the suit was presented in the year 1997, on account of the deaths of the defendants 1, 2 & 3, further proceedings in the suit was delayed. It was only in February, 2023, the legal representatives were brought on record and the suit is now ripe for trial.

5.Before commencement of trial, the plaintiff had presented an application for appointment of an Advocate Commissioner to survey the



property and to note down the structures that have been raised therein and to file a report drawn on scale. This was resisted by the defendants, pleading that the defendants have already filed a suit for declaration of title and other reliefs in O.S.No.52 of 1996 and in that suit, an Advocate Commissioner had been appointed and filed a report. Therefore, there is no necessity to file a fresh application for appointment of an Advocate Commissioner.

6.The learned Trial Judge felt that the report of the Advocate Commissioner with respect to the suit schedule mentioned properties would be helpful in deciding the case. Hence, he allowed the application. Against which the present civil revision petition.

7.I heard Mr.Sudhan for the civil revision petitioner.

8.Mr.Sudhan points out that the suit has been pending from the year 1997 till 2024 and no steps have been taken by the plaintiff for so many years. He points out that the suit being ripe for trial and being a suit of 1997 vintage, the Trial Court should have gone for day-to-day disposal of the suit,



rather than permitting appointment of an Advocate Commissioner. He also states that he has taken possession of the property based on the sale deed executed by the Rukmani Ammal and that the plaintiff is attempting to create a cause of action on the basis of the revenue documents.

9.I have carefully considered the submissions of Mr.Sudhan.

10.The suit seeks a declaration, permanent injunction and mandatory injunction. In case the suit is decreed, the Court will necessarily have to determine the extent of the alleged encroachment that has been made by the defendants over the plaintiff property. In order to come to a conclusion on the extent of encroachment, a report of the Advocate Commissioner would be helpful to the Court. In fact, in such kind of suits, the plan of the Advocate Commissioner is made a part of the decree so as to enable the Executing Court to identify the encroachment.

11.Furthermore, in *Haryana Waqf Board Vs. Shanti Sarup, (2008) 8 SCC 671*, the Supreme Court held that where there is a dispute in the identity,



lie or extent of the property, a report of the Advocate Commissioner would be of assistance to the Court. The case of the plaintiff is that the defendants have encroached upon her property. The defendants have denied of having encroached any portion.

12.The matter in issue which requires elucidation by the Court is whether there is an encroachment exists at all. The Judge obviously cannot go to the site and measure the property by himself. An Advocate Commissioner is the “eye” of the Court. If a report is submitted by the Commissioner stating as to what is the extent of the property and if there are any encroachments, then it would certainly assist the Court at the time of final disposal. In any event, the learned Trial Judge has exercised its jurisdiction in appointing the Advocate Commissioner.

13.The fear of Mr.Sudhan that the suit will be dragged on is unfounded, since the Court itself has directed the plaintiff to commence the evidence, while awaiting the Advocate Commissioner's report. This implies that the Court will proceed with the trial and as and when the report comes to



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the Court, it will deal with the same. If Mr.Sudhan's client feel that they have title to the property on the basis of their sale deed, it is always open to them to request the Advocate Commissioner to measure the property on the basis of the respective sale deeds of the plaintiff and defendants. They can do so by way of a memo of instruction to the commissioner. I am sure if such a memo is presented, the Commissioner will perform his duty as required by the warrant.

14.With the above observations, this Civil Revision Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed. No costs.

19.12.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

The District Munsif cum Judicial Magistrate,
Denkanikottai..



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V.LAKSHMINARAYANAN, J.

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