



CRP No.53 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2024

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRP No.53 of 2024

R.Krishnamurthy

... Petitioner

Vs.

1.M/s.Gem Granites
Represented by its Managing Partner,
S.R.Aasai Thambi,
Having office at Door No.78,
Cathedral Road,
Chennai-600 086.

2.S.R.Aasai Thambi
3.R.Veeramani
4.R.Sekar
5.S.R.Kumar
6.S.C.Sekar

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order in IA No.3 of 2022 in OS No.264 of 2022 dated 11.08.2023 on the file of the Additional District Court, Dharmapuri.



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For Petitioner : Mr.I.Abrar Mohamed Abdullah
For Respondents :Mr.C.Manohar Gupta

ORDER

The civil revision petition is filed to set aside the fair and decreetal order in IA No.3 of 2022 in OS No.264 of 2022 dated 11.08.2023 on the file of the Additional District Court, Dharmapuri.

2. The petitioner is the plaintiff and the respondents are the defendants in OS No.264 of 2022 on the file of the learned Principal District Court, Dharmapuri. The petitioner/plaintiff had filed the suit against the defendants for specific performance of oral sale agreement dated 28.10.2020. Since the respondents were taking steps to alter the physical features of suit properties, the petitioner/plaintiff had filed an application in IA No.3 of 2022 in OS No.264 of 2022 for appointment of an advocate commissioner to note down the physical features of the plaint schedule property. The trial court, by order dated 11.08.2023 had dismissed the said



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application on the ground that the commissioner cannot be appointed to collect evidence in a specific performance suit. Challenging the said order, the petitioner has filed the present civil revision petition.

3. Learned counsel for the petitioner submits that no prejudice would be caused to the defendants by appointing the advocate commissioner to note down the physical features of the property. Further, there are chances of alternating the property and damaging the property. Therefore, in the absence of any prejudice to the defendants, advocate commissioner may be appointed for the purpose of noting down the physical features of the property and not for the purpose of collecting evidence. Hence, he seeks to set aside the impugned order and to allow the revision.

4. Learned counsel for the respondents submitted that the suit is for specific performance that too based upon an oral agreement of sale and without any payment of consideration, to note down the physical features of the suit property, is unwarranted. Further, for the purpose of collecting



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evidence, advocate commissioner could not be appointed. To support his argument, learned counsel has relied upon the order passed by this Court in the case of ***Rabiya Basheer Ali vs C.Devandra Prasad dated 19.05.2010.*** Therefore, the trial court has rightly dismissed the said application. Hence, he seeks to dismiss the Revision.

5. Heard the learned counsels for the parties and perused the materials available on record.

6. On a perusal of the impugned order, it is noticed that the trial court has recorded that the petitioner has filed the suit for specific performance based upon the oral sale agreement dated 28.10.2020 and the respondents have completely denied the execution of said oral agreement of sale and also denied the consideration as stated in the plaint. Further, on a perusal of the affidavit filed by the petitioner before the Trial Court, it is noticed that in paragraph 29 of the said affidavit, the petitioner has stated that only to prevent the causing of damage to the suit properties, the petitioner wants to



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an advocate commissioner to be appointed. But the reason stated by the petitioner for such a prayer is opposed by the respondents/defendants on the ground that the respondents/defendants have denied the execution of the oral agreement of sale itself. The present attempt by the petitioner is only to fill up the gap and collect evidence through the advocate commissioner's report. Learned counsel for the respondent submitted that the order of the trial court is well justified and the same need no interference by this Court.

7. In such circumstances, the trial court has rightly dismissed the prayer of the petitioner for appointment of the advocate commissioner. I find no valid ground to interfere with the order dated 11.08.2023 passed by the trial court. Hence, the civil revision petition is dismissed. There shall be no order as to costs. Consequently, CMP No.196 of 2024 is closed.

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Index: Yes/No
Internet: Yes/No



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V.SIVAGNANAM, J.

(mrn)

To

The Additional District Court, Dharmapuri.

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