



C.R.P.(PD)(MD)No.1156 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2024

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THE HON'BLE MR. JUSTICE MUMMINENI SUDHEER KUMAR

C.R.P.(PD)(MD)No.1156 of 2020
and C.M.P.(MD)No.7394 of 2020

N.Denson

... Petitioner

Vs.

1.S.Yesudas
2.Y.PeterJebasharan
3.Y.Anton Jain
4.D.Subaraj
5.G.Satheesh

... Respondents

PRAYER: Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 16.09.2020 passed in I.A. No. 1 of 2019 in O.S.No.11 of 2019 on the file of Subordinate Judge, Padmanabapuram.

For Petitioner : Mr.G.Cenil

For Respondents : Mr.S.C.Herold Singh for R1 to R4
Mr.A.Anooj for R5



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ORDER

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This Civil Revision Petition is directed against an order dated 16.09.2020 passed in I.A.No.1 of 2019 in O.S.No.11 of 2019 on the file of the Court of Subordinate Judge, Padmanabapuram, filed under Order 26 Rule 9 of C.P.C. and Section 151 C.P.C. The said application was filed with the following prayer:

“1.To measure and prepare a plan for the property mentioned in the sale deeds Nos.2554/2010, 2555/2010, 2556/2010 dated 16.09.2010 in terms of the boundary recitals therein and in conformity with the resurvey plan.

2.To note and report the physical features of the suit property.

3.To note and report whether any such property of five cents is available as per the boundary recitals mentioned in the alleged sale deed No.2620/2010 dated 22.09.2010 executed by the 1st defendant in favour of the 2nd defendant.

4.And such other facts that are required in writing at the spot also be noted.”

2. The original suit was filed by the respondents herein contending that they have purchased 70 cents of land from the petitioner herein and



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paid consideration for the said 70 cents in the year 2010 and in the year 2016, when they measured the properties purchased by them, they came to know that the extent is only 40 cents within the boundaries mentioned in the sale deed and as such, they have filed the suit in O.S.No.11 of 2019, seeking recovery of an amount of Rs.8,35,000/- being the proportionate consideration paid by them, in respect of the deficit 30 cents of land. In the said suit, the respondents herein filed the I.A.No.1/2019 with the relief as noted herein above.

3. From the relief sought for in the application in question, it is evident, that the said application has been filed only intended to measure the property in order to establish the actual extent of land within the boundaries mentioned in the sale deed. In order to succeed in the suit, it is for the respondents/ plaintiffs to establish that the extent of land covered by sale deed is not 70 cents but lesser than the 70 cents. The very same aspect is now sought to be ascertained by seeking the assistance of the Court, by filing an application under Order 26 Rule 9 of C.P.C. Thus, directly, it is a case of gathering evidence with the assistance of the Court to establish the case of the respondents/plaintiffs. It is settled law that appointment of an



Advocate Commissioner under Order 26 Rule 9 of CPC cannot be entertained for the purpose of gathering evidence. It is only under certain peculiar circumstances, where the dispute is pertaining to the physical features of the land or where without the physical inspection of the subject property, Court cannot pass an effective judgment between the parties, etc., an Advocate Commissioner can be appointed under Order 26 Rule 9 of C.P.C. In the instant case, there is no dispute about the physical features of the property and only the extent of the land is in dispute.

4. It is for the respondents/plaintiffs to establish their case and succeed or fail. But they are not entitled to seek assistance of the Court for the purpose of gathering evidence. In the considered view of this Court, the present application filed in I.A.No.1 of 2019 is only intended to gather evidence in support of the case of the respondents/plaintiffs. But unfortunately, the learned trial Court allowed the said application in total ignorance of the parameters, with in which the power under Order 26 Rule 9 of C.P.C. can be exercised. Hence, the order under revision is wholly unsustainable. Accordingly, the same is set aside. However, it is made clear that after the evidence was adduced by both the parties, if there is any



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ambiguity in the matter, the learned trial Court may exercise its power under
Order 26 Rule 9 of C.P.C.

5. Subject to the above observations, this Civil Revision Petition is
allowed. There shall be no order as to costs. Consequently, connected
miscellaneous petition is closed.

15.03.2024

NCC : Yes/No
Index : Yes/No

vsm

To

- 1.The Subordinate Judge, Padmanabapuram.
- 2.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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MUMMINENI SUDHEER KUMAR, J.

vsm

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