

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, TIRUPPUR.

Present: Thiru. N.Gunasekaran, M.B.A B.L.,
Principal District Judge, Tiruppur

Friday, the 19th day of July, 2024

Thiruvalluvarandu 2055, Sri Kurothi year, 03rd day of Aadi month

I.A.No. 16 /2024 in

OS.No.45/2021

(CNR.No.TNTI18-002974-2020)

1. Park Trust
Represented by its Managing Trustee,
Dr.P.V.Ravi

2. Dr.P.V.Ravi

3. T.R.Karthik

... Petitioners / Plaintiffs

..Vs ..

1. K.Manoharan

2. R.Anusha

... Respondents / Defendants

On 16.07.2024, the petition came before me in the presence of Thiru.S.Bharath, Counsel appearing for the petitioners and Thiru.N.V.Giri, B.Sc., B.L., Counsel appearing for the 1st respondent and Thiru.A.Jeyakumar, Counsel appearing for the 2nd respondent and endorsement made as no counter and upon perusing the petition, counter filed by the 1st respondent and connected records, having stood over for consideration, this Court delivers the following:

19.07.2024

Principal District Court, Tiruppur

ORDER

This petition is filed under Order 26 Rule 10(2) and Section 151 of the Code of Civil Procedure to order for recording the oral evidence of the Advocate Commissioner Mr.P.V.Prakash.

2) **Petition averment in brief reads as follows:-**

2.1. The 3rd petitioner is the one of Trustees of Park Trust. He filed this affidavit on behalf of the Trust and also he aware of the facts of the case from his own knowledge. The suit has been filed for the reliefs of cancellation of a sale deed and other reliefs and the same may be read as part and parcel of this petition. Several contradictions have emerged in the course of evidence in the suit with respect to the classification of the suit property, whether it is agricultural or not and the value of the suit property, viz; the sale consideration / Ex.A.16 being one such value, the guideline value certificate issued by SRO, Palladam forming part of in Ex.B16 and Ex.A46 being another value and Ex.X1 order passed by the DRO reflecting one other value.

2.2. Further, this Court has framed issues 3 and 6, which call for elucidation of much higher actual market value of the suit property as against the consideration mentioned in Ex.A16, the impugned sale deed. Further, this Court was pleased to appoint an advocate - commissioner to note down the physical features of the suit property and file a report, by order dated 03.09.2021 in IA No.524 of 2021.

2.3. Accordingly, one Mr.P.V.Prakash, Advocate carried out the commission, inspected the property and submitted his report; dated 07.09.2021. None of the parties to the suit have filed their objections to the report. This Court received the Report as Ex.C.1, Sketch as Ex.C.2 and

Photographs as Ex.C3. However, no oral evidence of the Advocate Commissioner was recorded. The Court referred to the report of the Advocate Commissioner and proceeded to pass orders in IA No.35 of 2021. While so, in an attempt to show a reduced value of the suit property, the 1st defendant has suppressed the existence of several superstructures in the suit property and even the official witness, namely PW.2, who was summoned by the plaintiff, instead of deposing as a neutral official witness, has sided with the plaintiff and denied the existence of superstructures, Therefore, it has become crucial to elicit through the Advocate Commissioner, the observations noted and recorded by him while inspecting the suit property.

2.4. If the evidence of the learned Advocate Commissioner is received in the suit, it would enable to appreciate the crucial fact of existence of various superstructures as well as the other physical features of the suit property and the adjoining properties as on the date of inspection, which are vital for the proper adjudication of the matters in dispute in the suit.

2.5. Though the recording of evidence is closed and the suit has been posted for hearing arguments, it has become necessary for the petitioner/plaintiff to move this Court for re-opening the suit for recording the oral evidence of the Advocate Commissioner touching upon the matters referred to him in Ex.C1, Ex.C.2 and Ex.C.3, and the manner in which the Advocate Commissioner made the inspection. Unless this application is allowed, not only the plaintiff would be put to prejudice and hardship. On the other hand, no prejudice will occasion to the defendants if this petition is so allowed. Hence, the petition.

3) **Counter statement averments filed by the 1st respondent in brief reads as follows:-**

3.1. The petition is false, frivolous, vexatious and not maintainable both under law and on facts of the case. The petitioners have to strict proof of all the allegations made in the affidavit except those that are specifically admitted herein. The allegation in the affidavit that several contradiction have emerged in the course of evidence in the suit with respect to the classification of the suit property, whether it is agricultural or not and the valuation of the suit property namely the sale consideration as mentioned in Ex.A16 being one such value, the guideline value certificate issued by SRO, Palladam forming part of Ex.A16 to Ex.A46 being another value and Ex.X1 order passed by DRO reflecting one another value are all not correct and not admitted by this 1st respondent / 1st defendant.

3.2. It is true that the Advocate/Commissioner visited the suit property and filed his report and plan and that report and plan is marked as Ex.C1 and Ex.C2 and photographs as Ex.C3. Since the petitioners/plaintiffs have not filed any objections to the commissioner's report, they have no right to file this application and to examine the Advocate Commissioner to give oral evidence in this case. Therefore, the petition to seek permission to examine Advocate Commissioner in this suit is highly vexatious one and at the same time, the petitioners/plaintiffs have no right to do so.

3.3. The report of the Advocate Commissioner and plan and photos were marked as Ex.C1 to C3 are more sufficient for this case to decide the suit on merits. Suit for cancellation of sale deed executed by the plaintiffs 2 and 3 and 2nd defendant in favour of the 1st defendant at their individual

capacity and for which, the examination of Advocate Commissioner is not at all required under law to decide the suit on merit as per the issues framed by this Court. Therefore, there is no merit in this application. If the petition is allowed, this respondent/ 1st defendant will be exposed to irreparable loss and hardships and hence, the Petition is liable to be dismissed.

4) The Counsel for the 2nd respondent has made an endorsement as no counter on the side of 2nd respondent.

5) **The Point for consideration is**

Whether the oral evidence of the Advocate Commissioner is to be recorded in the suit?

6) No oral or documentary evidence was let in from either of the party.

7) **POINT:-**

Both side heard. Records perused. Suit is for the relief of cancellation of sale deed, permanent and mandatory injunction. Advocate Commissioner was appointed to note down the physical features of the suit property as per the Order in IA No.524 of 2021; 03.09.2021. In pursuant to the same, on 07.09.2021, the advocate Commissioner had visited the suit property having accompanied by respective counsel for both parties on prior notice and filed his report along with rough plan on 07.09.2021. Neither the Memo of instruction was given to the Advocate Commissioner at the time of his visit nor the objection was raised to his report.

8) On 25.04.2023, the trial in the suit has commenced and on conclusion, when the case was posted for both side argument, the petition

under order is filed to re-open the suit for recording the oral evidence of Advocate Commissioner. The reason cited by the petitioner in his affidavit accompanying the petition in seeking such examination is that due to the alleged several contradiction emerged in the course of evidence in the suit with respect to classification of suit property whether it is agricultural or not; valuation of suit property with reference to the impugned sale deed in Ex.A16 and guideline value in Ex.A46 and the Order passed by District Revenue Officer in Ex.X.1 and existence of superstructures. During trial, the report, rough sketch and photographs pertaining to the suit property from the advocate commissioner were marked as Exs.C1 to C3, respectively. It is to note that the advocate commissioner was appointed at the instance of the petitioner / plaintiff.

9) It is to reiterate that the petition under order seeking to examine the advocate commissioner is filed when the case is posted for both side argument on conclusion of evidence that too when there is a direction from Hon'ble High Court, Madras to dispose the case on hand within a stipulated time as per order dated; 27.11.2023 in C.M.A. Nos. 1828 and 799 of 2022 and C.M.P.No.13120 of 2022. It is pertinent to note that the plaintiff himself had sought the relief in the suit by valuing and describing the suit property only as a vacant land. As per the averment made in the affidavit accompanying the petition, the report of Advocate Commissioner along with rough sketch and photos of suit property were already marked as Exs.C1 to C3. No objection was raised in marking Exs.C1 to C3.

10) The report of Advocate Commissioner appointed by the Court regarding the existence of such necessity cannot be overlooked or rejected merely because of his non-examination as a witness as per the decision of Hon'ble Supreme Court of India reported in 1995 SUPP (4) Supreme Court Cases 600 in Misrilal Ramratan and others Versus A.S.Shaik Fathimal (Dead) LRS. And others.

11) The Advocate Commissioner is an Officer of the Court and is not necessary to examine him and his report is a part of the record and same cannot be overlooked or rejected on spacious plea of non-examination of him. The report of Advocate Commissioner can be treated as evidence in the suit where it is not challenged by any party as per Order 26 Rule 10(2) of C.P.C. as per the decision of Hon'ble High Court, Delhi in LT Foods Limited Versus Saraswati Trading Company in CS(COMM) 413/2021; dated 11.11.2022.

12) In the absence of any challenge to the report of the Advocate Commissioner, the law does not require him to be examined as per the decision of Hon'ble High Court of Delhi reported in Levi Strauss and Co., Versus Rajesh Agarwal in RFA 127/2007 and CM No.3247/2007; dated 03.01.2018.

13) If the party has not challenged the Commissioner report, then he cannot summon the Commission to prove the Commissioner report because it is already an evidence admissible in law as per decision of Hon'ble High Court, Madhya Pradesh reported in Ashok kumar alias Mallu Versus Krishan Kumar and another in Misc. Petition No.481/2019; dated 21.04.2023.

14) Therefore, this court is not inclined to allow the petition to seek the examination of Advocate Commissioner for the reasons stated therein. Point is answered accordingly.

In result, this Petition is dismissed.

Dictated to the Steno-typist, typed by her as directly on Computer, corrected and pronounced by me in the open Court dated this the 19th day of July, 2024.

Principal District Judge,
Tiruppur.

Draft / Fair / Copy Order
I.A. No.16/2024 in
OS No.45/2021
Dt:19.07.2024
PDJ Court, Tiruppur.