



C.R.P.(MD)No.685 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
23.03.2023	06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)No.685 of 2023

and

C.M.P.(MD)No.3186 of 2023

1.Thangavel, S/o.Sangiliappan

2.Murugan, S/o.Panneer

3.Marimuthu, S/o.Aathiyappan

4.Semmanan, S/o.Sadaiyan

... Petitioners

vs.

Shanthi, W/o.Arumugam

... Respondent

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 14.02.2023, passed in I.A.No.3 of 2022 in O.S.No. 141 of 2021, on the file of the District Munsif Court, Palani.

For Petitioners

: Mr.T.Lenin Kumar

For Respondent

: Mr.D.Venkatesh

ORDER

This Civil Revision Petition has been filed against the order dated 14.02.2023, passed in I.A.No.3 of 2022 in O.S.No.141 of 2021, on the file of the District Munsif Court, Palani.



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2. By the impugned order, the learned District Munsif Court, Palani, has rejected I.A.No.3 of 2022 filed by the petitioners for appointment of Advocate Commissioner under Order XXVI Rule 9 of C.P.C.

3. The petitioners are the defendants in O.S.No.141 of 2021 filed by the respondent before the District Munsif Court, Palani. The petitioners are aggrieved by the impugned order dated 14.02.2023, passed by the District Munsif Court, Palani in I.A.No.3 of 2022. The relevant portion of the impugned order dated 14.02.2023, reads as under:-

"மனுதாரர்கள்/பிரதிவாதிகள் அவர்கள் தரப்பில் உள்ள சான்றாவணங்கள் மற்றும் சாட்சியங்கள் மூலம் மட்டுமே சொத்தின் உரிமை மூலம் மற்றும் அனுபவத்தை நிரூபிக்க முடியும். மாறாக நீதிமன்ற ஆணையரின் அறிக்கை மற்றும் வரைபடத்தை வைத்து சொத்தின் உரிமை மூலம் மற்றும் அனுபவத்தை பொறுத்து எவ்வித முடிவுக்கு வரக்கூடாது மற்றும் வரமுடியாது என மாண்புமிகு மேலமை நீதிமன்றங்கள் பல முன் தீர்ப்புகள் வழங்கியுள்ளது. எனவே மனுதாரர்களின் இம்மனு சட்டப்படி நிலைக்கத்தக்கதல்ல என முடிவு செய்யப்படுகிறது."

4. The learned District Munsif, Palani, vide the impugned order dated 14.02.2023, dismissed I.A.No.3 of 2022 on the ground that the petitioners can prove their case through both oral and documentary evidence and not with the help of the report of an Advocate Commissioner.



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5. The respondent/plaintiff has filed O.S.No.141 of 2021 before the District Munsif Court, Palani, seeking a declaration and permanent injunction to direct the petitioners/defendants not to interfere with the peaceful possession.

6. The learned counsel for the petitioners relied on the following judgments:-

(i) Velmurugan Vs. Joseph reported in CDJ 2008 MHC 5212

"On a careful consideration of respective contentions, this Court opines for properly and correctly appreciating and assess the matter in issue in the suit, the appointment of Commissioner made by the Court in I.A.NO. 1277 of 2008 is a correct one and therefore, the appointment of Advocate Commissioner Thiru.S.Krishnamoorthy to identify, inspect and note down the physical features of the suit property with the help of Taluk Surveyor is a necessary and essential one and therefore, this Court is not interfering with the discretion exercised by the trial court in appointing the Advocate Commissioner in I.A.NO.1277 of 2008 and therefore, the civil revision petition fails and the same is hereby dismissed."

(ii) Dhanabakkiyam and others Vs. Palaniyammal and others

[CRP(PD)No.1521 of 2015, dated 10.04.2015]

"10. The ratios laid down in the above referred Judgments are settled positions and for the said purposes the Advocate Commissioner cannot be appointed. But, in the case on hand, the defendants are disputing the very identity of the property. That apart, the plaintiffs have averred that the defendants are trying to damage the poli and are attempting to encroach into the suit property and alter the physical features. In these circumstances, the appointment of an Advocate Commissioner is necessary for proper adjuration of the dispute between the parties. The trial Court is directed to



appoint an Advocate Commissioner to note down the physical features of the suit property. In these circumstances, I do not find any error or irregularity in the order passed by the trial Court. The Civil Revision Petition is devoid of merits and hence the same is dismissed. No costs. Connected miscellaneous petition is also dismissed."

7. The learned counsel for the respondent relied on a judgment of this Court in **Sevugan and another vs. Chinnathambi** reported in **2016 (3) MWN (Civil) 527**, wherein it has been held as follows:-

*"8.In the decision in **Krishnamurthy T.K. Vs. Tamil Nadu Water and Drainage Board** reported in 2006(5) CTC 178, this Court, in para 9, has held as follows:*

"9.The report of the Advocate Commissioner alone can never be the basis for deciding the Suit as Commissioner should not be appointed to gather evidence to prove the case of the parties. Parties should prove their case by themselves by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. But in this case, Advocate Commissioner was sought for and appointed to gather the evidence to disprove the case of the revision petitioner in respect of a property which is not subject matter of the suit."

9.In another decision in Chandrasekaran Vs. V.Doss Naidu reported in (2005) 3 M.L.J. 473, wherein, this Court in para 10,21 and 22, has held as follows:

"10.Countering the arguments, learned counsel for the respondent has drawn the attention of the Court to the number of documents filed along with the plaint and has submitted that in the light of the documents filed by the plaintiff and the earlier litigation, the appointment of Advocate Commissioner is not warranted. It is further submitted that the factum of possession and age of the trees are the main issues to be determined by the Court in the suit and the same cannot be delegated to the Advocate Commissioner. He has further submitted that the factum of possession is to be proved by adducing evidence.

21. The power under Article 227 of the constitution is to be exercised by the Court in its discretion and cannot be claimed as of



right by any party. Under Article 227 of the Constitution of India, the well settled position is:-

(1)The High Court's power to revision under Article 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised mist sparingly, in cases where grave injustice would be done unless the Higher Court interferes. It cannot be used as appellate or revisional power.

(2)The Power would not be exercised to correct an error of fact or of law, not being an “error of law apparent on the face of the record”, of an “irregularity or illegality of procedure” unless such error affects the jurisdiction, or involves a breach of the principles of natural justice; or to reappraise the evidence.

(3)Nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior court, whether on a question of fact, or of law or interfere with the intra vires exercise of a discretionary power; unless it is "arbitrary or capricious" or unless there was no evidence at all on which the inferior Court could have come to the conclusion it did, or there was error of finding on a "jurisdictional fact". Whether the High Court found fault with the appellate court in declining to take into consideration certain documents and took them on record, instead of substituting its opinion on the merits of the case, it should have remanded the matter back for the opinion of the appellate Court, it being the final Court of fact.

(4)Nor can the High Court, nor being an appellate Court, pass an order of remand. In short, as regards findings of fact of the inferior Courts, the jurisdiction under Article 227 is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the findings of fact. Consequently, the High Court cannot quash the judgment of the subordinate Court merely on the ground that its findings of fact were erroneous, but could do so only if the subordinate Court came to its conclusion without any evidence or upon a misreading of the evidence, or if its conclusions were perverse.

There is nothing to suggest that the impugned order is perverse or in violation of law warranting interference under Article 227 of the Constitution of India."



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8. I have perused the impugned order dated 14.02.2023 and also perused the affidavit filed in support of I.A.No.3 of 2022 in O.S.No.141 of 2021, on the file of the District Munsif Court, Palani.

9. Though the relief that has been sought for by the petitioners/defendants in the suit is for appointing an Advocate Commissioner to mark the physical features of the suit schedule property and give a report, the real intention appears to be to prove their case regarding possession of the suit schedule property. The law on the subject is well settled. The object of Order XXVI Rule 9 of Civil Procedure Code is not to assist a party to collect evidence where the party can procure the same. An Advocate Commissioner can be appointed under Order XXVI Rule 9 of the Code of Civil Procedure, 1908 *inter alia* for elucidating any matter in dispute. No Advocate Commissioner is to be appointed in a suit for injunction.

10. The respondent/plaintiff filed O.S.No.141 of 2021 for the relief of declaration and permanent injunction. Whether the respondent/plaintiff is in possession of the suit schedule property is a matter of evidence. It is for the respondent/plaintiff to prove that she is in possession of the suit schedule property, by letting in oral and documentary evidence. Similarly, to disprove the case of the respondent/plaintiff, it is for the petitioners/defendants to let in evidence both oral



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and documentary. This procedure of letting in evidence at the time of trial cannot be short-circuited by appointing an Advocate Commissioner under Order XXVI Rule 9 of C.P.C. Therefore, I do not find any reasons to interfere with the impugned order, dated 14.02.2023, passed by the learned District Munsif, Palani, in I.A.No.3 of 2022 in O.S.No.141 of 2021.

11. Accordingly, this Civil Revision Petition is dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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06.04.2023

To

The District Munsif,
Palani.



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C.SARAVANAN, J.

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PRE-DELIVERY ORDER MADE IN
C.R.P.(MD)No.685 of 2023

DATED : 06.04.2023