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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD).No.88 of 2014
and M.P.No.1 of 2014

The Panchayat President,
Ottapatti Village,
Attur Taluk,
Salem District.

... Petitioner

Vs.

1.Subburaya Pillai
2.Muthusamy
3.Karunakaran

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 06.11.2013 made in I.A.No.575 of 2013 in O.S.No.73 of 2013 on the file of the District Munsif Court, Attur, Salem District.

For Petitioner : Mr.C.Prakasam
For Respondents: Ms.Zeenath Begum

O R D E R

The defendant in the suit filed the present revision petition challenging the order passed in I.A.No.575 of 2013 dated 06.11.2013.

2.The respondents filed the suit on O.S.No.73 of 2013 for permanent injunction setting out the description of the properties in the plaint. The revision petitioner/defendant filed an application under Order 26 Rule 9 of the Civil Procedure Code seeking for appointment of an Advocate Commissioner. The reasons set out in the affidavit filed by the revision petitioner in respect of the petition are that they have to ascertain the age of the trees situated in the suit schedule properties and the details of the bore-well, road and the shape of a temple in the suit property along with the Map.

3.The trial Court, considering the facts and circumstances, rejected the petition mainly on the ground that the appointment



of an Advocate Commissioner in the suit is unnecessary and further, the details regarding the bore-well and other structures existing in the suit schedule property can be established through oral and documentary evidences.

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4.The learned counsel appearing for the petitioner submitted that the respondents have made false statements in their plaint and in order to rebut the same, appointment of an Advocate Commissioner is just and necessary.

5.The learned counsel appearing for the respondents opposed the same by stating that the petition seeking appointment of an Advocate Commissioner is filed in order to collect evidence with regard to the material objects prevailing in the suit schedule property and such an intention of the parties cannot be encouraged by the Courts.

6.Considering the submissions made by the learned counsel for the petitioner and the learned counsel for the respondents, this Court is of the opinion that it is a case of permanent injunction and therefore, the parties have to prove their respective cases before the trial Court by producing oral and documentary evidences. It is a clear case where a petition for appointment of an Advocate Commissioner is filed in order to collect evidence with regard to the material objects prevailing in the suit schedule property. The trial Court also rightly found that appointment of an Advocate Commissioner is unnecessary and the parties can very well prove their case through the evidences. In such circumstances, this Court is not inclined to consider the grounds raised in the revision.

7.Accordingly, the order passed in I.A.No.575 of 2013 in O.S.No.73 of 2013 dated 06.11.2013 is confirmed. In the result, the Civil Revision Petition in C.R.P.(PD).No.88 of 2014 is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

va



To

1. The District Munsif Court,
Attur, Salem District.

+1cc to Mr.Muruga Manikkam, Advocate, S.R.No.12413

+1cc to Mr.Prakasam, Advocate, S.R.No.12383

SKS (CO)
RS (09/03/2017)

C.R.P. (PD) .No.88 of 2014
and M.P.No.1 of 2014