

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.09.2015

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THE HONOURABLE MR. JUSTICE T.MATHIVANAN

**C.R.P.(NPD) No.1578 of 2012
and
M.P.No.1 of 2012**

N.Paramasivam

..Petitioner/Plaintiff

/vs/

1.Krishnaveni
2.Manimekalai
3.Parameswari
4.Lakshmi
5.Panchali
6.Parimalam
7.Navamani
8.Rani
9.Banumathi
10.Paravatham

..Respondents/Defendants

Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final order passed on 05.01.2012 in I.A.No.502 of 2011 in O.S.No.81 of 2009 on the file of the District Munsif cum Judicial Magistrate Court, Kodumudi and to set aside the same.

For Petitioner :Mr.A.Sundaravadhanan
For Respondents :Mr.M.Guruprasad
caveator counsel

ORDER

This memorandum of civil revision petition has been directed

against the fair and decreetal order dated 05.01.2012 and made in I.A.No.502 of 2011 in O.S.No.81 of 2009 on the file of the District Munsif-cum -Judicial Magistrate Court, Kodumudi.

2. It appears from the records that the revision petitioner being the plaintiff has filed the above suit in O.S.No.81 of 2009 against the respondents herein seeking the relief of declaration and for consequential permanent injunction. The said suit is contested by the respondents by filing their written statements. It also appears that during the pendency of the said suit, the revision petitioner has taken out an application under Order 39, Rule 1 & 2 and Section 151 of the Code of Civil Procedure seeking the relief of ad-interim injunction against the respondents saying that he is having right to drain seepage water into the respondents land and that in order to convert their land into house sites, the respondents have been making arrangements to raise the level of their land than the level of the revision petitioner's land.

3. Originally, an interim injunction was granted by the Trial Court in favour of the revision petitioner and subsequently, it was made absolute and as argued by the learned counsel appearing for the revision petitioner, in deviation of the order of injunction, the respondents were proceeding to raise the level of their land and therefore, the revision petitioner had filed an

application in I.A.No.272 of 2011 to punish the respondent. That application is still pending. Subsequent to that application, the revision petitioner had also taken out another application in I.A.No.502 of 2011 under Order 26, Rule 9 and Section 151 of Code of Civil Procedure to appoint a Commissioner in I.A.No.272 of 2011 to make a local inspection of the disputed land and to file a report along with sketch to show that the level of the respondents' land was raised to that extent than the level of the revision petitioner's land and that application was dismissed by the learned Trial Judge on the ground that:

“to prove the above said unlawful activities of the respondents, the revision petitioner has sufficient opportunity by let in oral or documentary evidence. It appears that the petitioner attempts to collect the evidence through the Advocate Commissioner. It cannot be permitted because of it is well settled that the Advocate Commissioner cannot be appointed to collect the evidence”

4. The learned counsel appearing for the respondents has vehemently submitted that the order of the learned Trial Judge did not require any disturbance and therefore, he has urged to dismiss the revision petition.

5. This Court has perused the impugned order along with the averments of the affidavit filed in support of the above said application and finds that in allowing the application in I.A.No.502 of 2011 by appointing an Advocate

Commissioner, no prejudice would be caused to the respondents being the defendants in the suit and hence, in the interest of justice, this Court finds that it would be appropriate to appoint an Advocate Commissioner to sort out the real issue between the parties. The impugned order dated 05.01.2012 is set aside and the application in I.A.No.502 of 2011 is allowed and the Trial Court is directed to appoint an Advocate Commissioner for a limited purpose as stated in the application in I.A.No.502 of 2011, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the suit in O.S.No.81 of 2009 shall be disposed of within a period of six months. No costs. Consequently, connected Miscellaneous Petition is also closed.

09.09.2015

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To

The District Munsif cum Judicial Magistrate Court,
Kodumudi

T.MATHIVANAN,J.

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