

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

**C.R.P.(P.D.) No.2862 of 2014**

Dhandapani : Petitioner  
versus

Velayudham : Respondent

**PRAYER:** Revision filed against the order dated 13.12.2013 in I.A.No.211 of 2013 in O.S.No.233 of 2012 on the file of the Principal District Munsif Court, Tirukoilur.

For petitioner : Mr.V.Lakshminarayanan  
For respondent : Ms.M.Poornima  
for M/s.Sarvabhauman Associates

**ORDER**

The petitioner, in his capacity as the first defendant, in O.S.No.233/2012, on the file of learned Principal District Munsif, Tirukoilur, filed an application in I.A.No.211/2013, for appointment of an Advocate Commissioner to inspect the suit property and file a report. The application was dismissed by the learned Trial Judge on the ground that such appointment was not necessary as there was no dispute between the parties with regard to the extent or identity of the property. The said order is under challenge at the instance of the unsuccessful petitioner in I.A.No.211 of 2013.

2. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the respondent.

3. The respondent filed the suit in O.S.No.233 of 2012, before the Trial Court praying for a decree of declaration and consequential injunction. The suit was contested by the petitioner.

4. The petitioner filed an application in I.A.No.211 of 2013, for appointing an Advocate Commissioner to inspect the property and file a rough sketch marking the well situated at S.No.240 and the property in S.No.23/11B. The petitioner also wanted inspection of the well situated in "B" Schedule for the purpose of an effective adjudication of the matter.

5. The learned Principal District Munsif dismissed the application primarily on the ground that there is no need for appointment of Advocate Commissioner in a suit for declaration and permanent injunction.

6. The suit being one for declaration and permanent injunction, it is for the respondent, who is the plaintiff, to prove that he is entitled to a decree on the basis of the materials available on record. There was no need on the part of the petitioner to take up the task of proving the case. The question of appointment of an Advocate Commissioner would arise only in case the Court is of the view that the report and sketch must be called for, to clear certain doubts and thereby to enable an effective adjudication of the matter.

7. The suit is now ripe for trial. The question of appointment of Advocate Commissioner would be decided by the trial Court taking into account the evidence adduced by the parties. That stage has not arisen so far. I am therefore of the view that appointment of Advocate Commissioner should be decided only after the conclusion of trial. In case the impugned order is allowed to stand, it would not be possible for the parties at a later point of time to apply for appointment of Advocate Commissioner even if appointment is found necessary to clarify certain aspects. I am therefore of the view that the application in I.A.No.211 of 2013 requires to be restored.

8. In the result, the order dated 13 December 2013 is set aside. The application in I.A.No.211 of 213 is restored to file. The learned District Munsif, Tirukoilur, is directed to consider the application in I.A.No.211 of 213, after the conclusion of trial. I make it clear that it is for the Trial Court to decide as to whether, given the nature of evidence adduced by the parties, and issues to be decided, any such appointment is necessary.

9. The civil revision petition is allowed to the extent indicated above. No costs. Consequently, M.P.No.1/2014 is closed.

**20.10.2016**

Index:Yes/no  
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To  
The Principal District Munsif Court, Tirukoilur

**K.K.SASIDHARAN, J.**

(tar)

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