

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.1023 of 2012
and
M.P.No.1 of 2012**

C.Subramani

.. Petitioner

Vs.

1.Perumal Udayar

2.P.Selvam

3.P.Govindaraj

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the District Munsif Court, Thirupathur, dated 30.09.2011 in I.A.No.939 of 2010 in O.S.No.309 of 2010.

For Petitioner : Mr.P.Valliappan

For Respondents : No Appearance

ORDER

The plaintiff in the suit is the revision petitioner. The petitioner herein as plaintiff filed a suit in O.S.No.309 of 2009 against the respondents herein for declaration and permanent injunction in respect of the suit property. The respondents herein are the adjacent land owners of the revision petitioner's property. The petitioner herein took out an application in I.A.No.939 of 2010 for appointment of an Advocate Commissioner to measure the suit property with the help of Surveyor.

2.The reason for appointment of Advocate Commissioner stated by the revision petitioner herein is that the measurement of the suit schedule property remains incorrectly described in the UDR Patta and the corresponding sketch as against its physical existence. The said error crept in during the UDR scheme survey. The original extent of the suit schedule property is a piece of land measuring 2 acre, which came to be allotted as the share of the revision petitioner in their family partition. Therefore in the above factual background for proper appraisal of the petitioner's case it became indispensable to get a clear picture of the suit property. Further the measurement of suit property with reference to the boundaries mentioned in the title deeds as well

as the measurement in line with revenue records would enable the trial Court to arrive at a just and correct decision. Therefore to ascertain the physical feature of the suit property an Advocate Commissioner was sought to be appointed, so as to inspect the suit property and to measure the same with the help of the surveyor.

3.Per contra, the revision petitioner resisted the said application stating that the above petition of the revision petitioner is not maintainable since Tasildhar, the Revenue Official who is responsible for the alleged error crept in revenue record is not arrayed as a party. Further the revision petitioner's object behind the application is to collect evidence of possession and enjoyment, through the Advocate Commissioner, which is impermissible under law. Therefore, the revision petitioner prayed the Court below to dismiss the commission application.

4.Upon considering the rival submission on either side the trial by order dated 30.09.2011 has dismissed the revision petitioner's application for appointment of an Advocate Commissioner. Aggrieved over the same the present Civil Revision Petition is filed by the 1st defendant / revision petitioner.

5.I heard Mr.P.Valliappan, learned counsel appearing for the petitioners and there is no representation on behalf of the respondents and perused the entire records.

6.This Court has carefully gone through the entire records. The case of the revision petitioner is that the suit schedule property remains incorrectly described in the UDR patta and the corresponding sketch as against its physical existence. The measurement of suit property with reference to the boundaries mentioned in the title deeds would enable the trial Court to get a clear picture of Suit site with correct measurements and the same would not amount to collection of evidence.

7.In this regard it would be relevant to look into the decision of this Court dated 30.09.2008 made in C.R.P.No.3304 of 2008 in the matter of **Periya Kaliyappa Gounder & ors. v. Karumalaiappa Gounder**, holding that in a suit for bare injunction the appointment of advocate commissioner to note down the physical features would not cause any prejudice to the other side and it would only reduce the burden of the Court in arriving at a right conclusion.

8. In yet another decision of this Court dated 07.01.2016 in C.R.P.No.2548 of 2015 in the matter of **Vasuki & anr. v. K.Sarvesawasa Rao**, this Court held even in a suit for bare injunction, the appointment of advocate commissioner can be appointed to note down the physical feature of the suit property.

9. On plain reading of the impugned order, this Court finds that the revision petitioner's application for appointment of advocate commissioner is dismissed on the ground that the petitioner attempt to cull out evidence of possession.

10. It is pertinent to note that the importance of appointment of an advocate commissioner has been elaborately discussed by this Court in the matter of **S.Palanisamy Gounder v. N.Palanisamy Gounder & ors.**, reported in **2007 (1) CTC 611** whereby this Court held even if no application is made by either of parties, in the interest of justice so as to arrive at a correct decision the Court on its own can appoint a commissioner for local investigation regarding identification, location, measurement of land. Such report is to be used for appraisal of situation and for better understanding of evidence of parties.

11.It is noteworthy to refer a judgment of Andhra Pradesh High Court reported in **2013 (1) ALT 548** in the matter of **Donadulu Uma Devi Vs Girika Katamaiah @ Basaiah**, holding that when there is a dispute or issue with regard to identity of property in a litigation, it is necessary to appoint a commissioner for localizing the property which may be even taking necessary assistance from a qualified surveyor which will not amount to collecting evidence which is prohibited.

12.Further Our Hon'ble Apex Court vide its decision reported in **2008 AIR SCW 6500, Haryana Wakh Board Vs Shanti Sarup & ors.** has held that the appointment of advocate commissioner to note down the physical features of suit property becomes indispensable and the same is permissible, if there exist a quarrel in respect of suit schedule properties.

13.In this context I have also rendered a judgment reported in **2017 (2) CTC 353** in the matter of **Shanmugathai Vs Kamalammal**, holding that "A picture is worth a thousand words" in line with words of my Brother Judge made in the matter of **Panjavarnam & ors. v. Visuvasam Jeyaseeli** in C.R.P.(NPD)(MD)No.2192 of 2012.

14.Thus in the interest of Justice, this Court finds that a survey

by the Advocate commissioner with the aid of qualified Surveyor will serve the Court for proper appreciation of facts. There is also dispute between the parties, over the nature and extent of the suit properties.

15. For the foregoing reasons, this Court finds that appointment of advocate commissioner to note down the physical features of the suit property neither cause prejudice to the respondent nor it amount to collection of evidence. When there is a quarrel regarding the nature, extent and features of the suit property, then it is appropriate for the Courts to appoint an advocate commissioner in this regard to note down the physical features of the suit property. It is made clear that the advocate commissioner shall not make any remark or opinion touching upon the possession of the subject property.

16. In the result:

- a) the civil revision petition is allowed, be setting aside the order in I.A.No.939 of 2010 in O.S.No.309 of 2010, dated 30.09.2011, on the file of the District Munsif Court at Tirupathur.
- b) the learned District Munsif, Tirupathur, is hereby directed to appoint an Advocate Commissioner and

directed the Advocate Commissioner to inspect and file a report within a period of one month.

- c) after filing the report, the learned District Munsif, Tirupathur, is hereby directed to take up the suit on day to day basis, without giving any adjournments to either parties and to dispose the same within a period of three months from the date of receipt of a copy of this order. Both the parties are hereby directed to co-operate for early disposal of the suit. Consequently, connected miscellaneous petition is closed. No costs.

23.12.2016

Note: Issue order copy on 05.12.2017
vs

Index: Yes
Internet: Yes

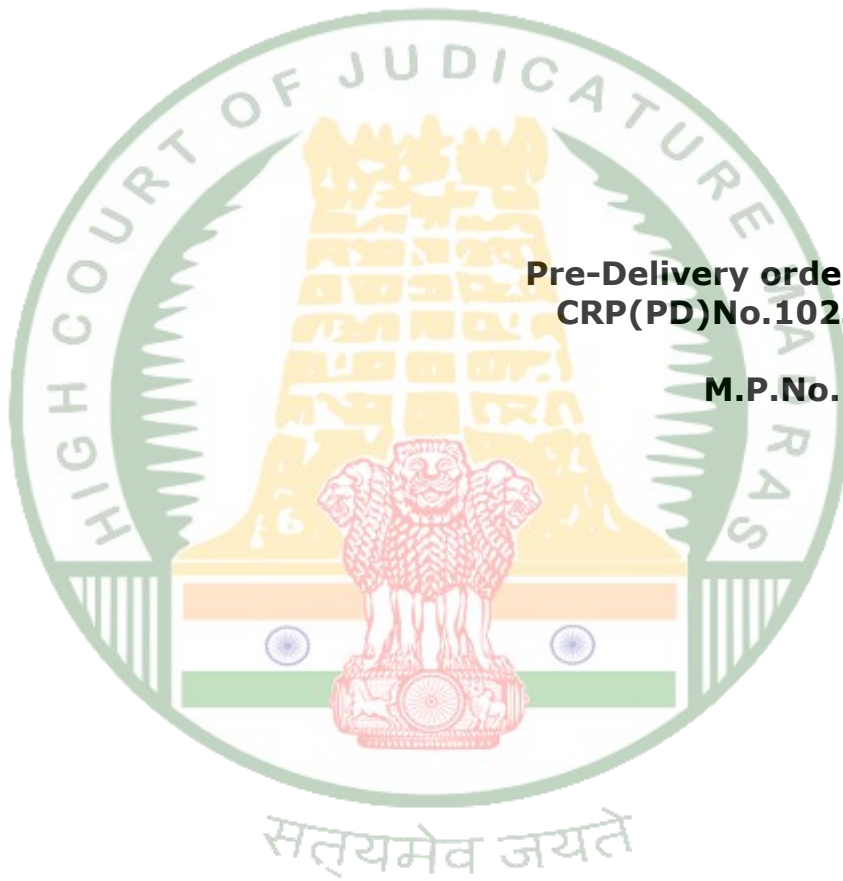
To

The District Munsif Court, सत्यमेव जयते
Thirupathur.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
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and
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