

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20 .12.2016

Coram

The Honourable MRS.JUSTICE PUSHPA SATHYANARAYANA

C.R.P.PD.No.1888 of 2016  
and C.M.P.No.9878 of 2016

S.Manohar

... Petitioner

vs.

C.Bhavani

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decretal order dated 07.04.2016 made in I.A.No.252 of 2016 in O.S.No.151 of 2016 on the file of the Principal District Munsif, Alandur.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.B.Sundarapandian

**ORDER**

The defendant, who is the petitioner has filed the revision aggrieved by an order allowing appointment of Commissioner in a suit for permanent injunction restraining the defendant from interfering with the

peaceful possession and enjoyment of the suit property.

2. The plaintiff had contended that she is in possession and enjoyment of the suit property having purchased by the plaintiff's father from one Irusan. The plaintiff claims to be in possession of the suit property. As the defendant, who is residing near the suit property, attempted to grab the suit property and with an intention to occupy the same, the suit has been filed. Since the suit property is a vacant site and the respondent is attempting to make illegal construction over the same, an order seeking appointment of Commissioner has sought for to measure, inspect and note down the physical features of the suit property. The defendant claimed the right and title to the suit property by virtue of a sale deed. The defendant also claimed exclusive possession and enjoyment of the suit property.

3. The learned Principal District Munsif, Alandur had allowed the application for appointment of Commissioner stating that the suit property is a vacant land and as the defendant was trying to put up a construction in the same, a Commissioner should be appointed to note down the physical features of the suit property, which would circumvent

to the oral evidence.

4. If the apprehension of the plaintiff is that the respondent is trying to put up a construction, he should ask for injunction restraining the defendant from doing so and not for appointment of a Commissioner. A Commissioner cannot be appointed to collect evidence, but only to obtain evidence, which is of the peculiar nature, which could be obtained only by way of spot inspection.

5. The location and extent of the property is not in dispute between the parties. Admittedly, the suit property is also a vacant land. When the possession only has to be established in a suit for injunction, a Commissioner need not be appointed to find out the factum of possession. Even in the plaint, it has only stated that the defendant is attempting to make an illegal construction in the suit property. Therefore, the Court cannot exercise the power of appointment of Advocate Commissioner for local investigation to assist the party to collect evidence. Therefore, the order of the Principal District Munsif, appointing Commissioner suffers from material irregularity and hence the same is set aside.

PUSHPA SATHYANARAYANA.J

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6. Accordingly, the impugned order passed by the Court below in I.A.No.252 of 2016 in O.S.No.151 of 2016 dated 07.04.2016 is set aside and this civil revision petition is **allowed**. No costs. Consequently, the connected miscellaneous petition is closed.

20.12.2016

Index :Yes

Internet:Yes

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To

The Principal District Munsif,  
Alandur.

C.R.P.PD.No.1888 of 2016  
and C.M.P.No.9878 of 2016

