

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3182 of 2013
and
M.P.No.1 of 2013**

1.Kaliammal
2.Sarathamani
3.Sivaprakasam
4.Loganathan
5.Kalaiselvi
Petitioners

..

Vs.

1.Muthappan
2.Ganesan
3.Kaliappan
4.Natesan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 05.10.2012 made in I.A.No.867 of 2012 in O.S.No.260 of 2012, on the file of the District Munsif Court, Mettur and prays to set aside the same.

For Petitioners : Mr.S.Muthukumar

For Respondents : Mr.A.Sundaravadhanam (for R1
& R2)

No Appearance - (for R3 and R4)

ORDER

The case of the revision petitioners is that they filed a suit for permanent injunction against the respondent herein in O.S.No.260 of 2012 before the District Munsif Court, Mettur. The defendants / Respondents herein filed Written Statement and resisted the suit saying the suit for bare injunction is not maintainable in the absence of the relief of declaration of title. Pending suit, the revision petitioners took out an application in I.A.No.867 of 2012 to appoint an Advocate Commissioner to note down the physical features of the suit property and to file a report with plan.

2.The respondent filed counter affidavit to the said I.A. and objected to appoint an Advocate Commissioner to note down the physical features of the suit property on the ground saying that the suit is only for permanent injunction and in a suit for bare injunction no commissioner can be appointed.

3.Upon considering the rival submission on either side, the Trial Court by order and decree dated 05.10.2012 held that no

commissioner can be appointed to elicit the factum of possession by any parties.

4.I have heard the arguments on either side and perused the records. It is true that the revision petitioners have filed a suit for permanent injunction and in that suit he sought for an appointment of Advocate Commissioner to note down the physical features of the suit property. There is no straight Jacket formula that no Commissioner could be appointed in a suit for permanent injunction. Further noting down the physical features of the suit property could not amount to collecting of evidence.

5.In this regard I have already rendered a judgment reported in **2017(2) CTC 353** in the case of ***Shanmugathai –Vs- Kamalambal and another*** wherein at paragraph 12, I have held as follows:

“12. At this juncture, it is useful to refer the Judgment of this Hon’ble Court in the case of Panjavarnam and others –Vs- Visuvasan Jeyaseeli, C.R.P.(NPD)(MD) No.2192 of 2012, wherein it was held that the Advocate Commissioner if appointed would be able to visit the suit property with the help of a Surveyor, measure the same and locate it and also note down as to what are all in existence in the suit property. Noting down the physical features would not amount to culling out the evidence.

Further this Court enunciated the importance of the maxim that "A Picture is worth a thousand words". Further it was held by this Hon'ble Court in the said Judgment that it is mandate on the part of Lower Court to appoint an Advocate Commissioner with a mission to visit the Suit property with the help of Surveyor and measure the same by referring to the Survey Map and documents of both sides and note down the physical features.

6. Therefore even though it is a suit for bare injunction by appointing Advocate Commissioner the Court could come to a correct conclusion. Further as held in the above judgment "A picture is worth a Thousand words". In the light of the discussion made above and to meet the ends of justice, this Court feels that this Civil Revision Petition is to be allowed.

7. In the result:

(a) this civil revision petition is allowed, by setting aside the order passed in I.A.No.867 of 2012 in O.S.No.260 of 2012, dated 05.10.2012, on the file of the District Munsif Court, Mettur;

(b) the trial Court is directed to appoint an Advocate Commissioner within a period of 15 days from the date of

receipt of a copy of this order and direct the Advocate Commissioner to file his report within a period of one month thereafter;

(c) on filing the report, the trial Court is directed to take up the suit, on day to day basis, without giving adjournment to either parties and to dispose of the suit within a period of three months thereafter. Both the parties are hereby directed to give their fullest co-operation for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

15.12.2016

Note: Issue order copy on 27.04.2017
Internet: Yes
Index: Yes

vs

To

The District Munsif Court,
Mettur.

M.V.MURALIDARAN, J.

VS

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