

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3600 of 2013
and
M.P.No.1 of 2013**

Duraisamy

.. Petitioner

Vs.

1.Rajendran

2.Lawrence

3.Ranganayagi

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Decree and Judgment dated 27.02.2013 passed by the learned District Munsif Court, Jayankondam in I.A.No.124 of 2013 in O.S.No.174 of 2007.

For Petitioner : Mr.V.Manohar

For Respondents : Mr.S.Nagarajan

ORDER

This Civil Revision Petition has been filed against the Decree and Judgment dated 27.02.2013 passed by the learned District Munsif

Court, Jayankondam in I.A.No.124 of 2013 in O.S.No.174 of 2007.

2.The facts reading to this Civil Revision Petition is runs as follows:

According to the revision petitioner, he, as a plaintiff filed a suit against the respondents herein in O.S.No.174 of 2007, on the file of the learned District Munsif Court, Jayankondam, for permanent injunction. The respondents herein filed written statement and resisting the suit. Pending suit, the revision petitioner has filed an application in I.A.No.124 of 2013 seeking to appoint an Advocate Commissioner to note down the physical features of the suit property to find out the suit Survey number. The said application was resisted by the respondents herein by filing counter affidavit.

3.Upon considering the rival submissions on either parties, the Court below dismissed the application by order dated 27.02.2013 on the ground that the identity of suit property is not in dispute and therefore, no Commissioner is necessary. Aggrieved over the same, this Revision Petitioner has come up with the present Civil Revision Petition.

4.I heard Mr.V.Manohar, learned counsel appearing for the petitioner and Mr.S.Nagarajan, learned counsel appearing for the respondents and perused the entire records.

5.It is seen from the records that according to the revision petitioner, there is a dispute with regard to identity of suit property and its survey number with respect of F.M.Sketch. In that regard, the revenue officials have made corrections, but the relevant records have not been produced by the revenue officials. Therefore, the revision petitioner sought for appointment of Advocate Commissioner, whereas the respondents herein contended that by filing this application, the plaintiff is trying to collect the evidence and the same cannot be entertained.

6.While considering the appointment of Advocate Commissioner application, I want to refer the judgment of myself reported in **2017(2) CTC 353** in the case of ***Shanmugathai v. 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.

7. For the forgoing reasons, the appointment of Advocate Commissioner is necessary in the interest of justice. Therefore, I hereby set aside the order passed by the Court below, this Court feels that this Civil Revision Petition is to be allowed.

8. In the result:

(a) this civil revision petition is allowed, by setting aside the order passed in I.A.No.124 of 2013 in O.S.No.174 of 2007, dated 27.02.2013, on the file of the learned District Munsif Court, Jayankondam;

(b) the learned District Munsif, Jayankondam, is hereby directed to appoint an Advocate Commissioner within a period of 7 days from the date of receipt of a copy of this order and direct the Advocate Commissioner to inspect and file a report within a period of one month from the date of appointment of Advocate Commissioner;

(c) after filing the Advocate Commissioner's report, the learned District Munsif, Jayankondam is hereby directed to take up the suit on day to day basis without giving any adjournments to either parties and dispose the same within a period of four months thereafter, since the suit is for the year 2007. Both the parties are hereby directed to co-operate for early disposal of the suit. No costs. Consequently, connected miscellaneous petition is closed.

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23.12.2016

Note: Issue order copy on 19.09.2017

Internet: Yes

Index: Yes

vs

To

The District Munsif Court, Jayankondam.

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.3600 of 2013
and
M.P.No.1 of 2013**

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