



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2015

CORAM:

WEB COPY

**THE HONOURABLE MR.JUSTICE T.MATHIVANAN**

C.R.P. (PD) (MD) No.1727 of 2015  
and M.P. (MD) No. 1 of 2015

1.Kandasamy  
2.Gangammal : Petitioners/Petitioners/Petitioners/  
3<sup>rd</sup> Parties/3<sup>rd</sup> Parties

Vs.

1.Pushpavalli @ Pushpam : 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/  
1<sup>st</sup> Respondent/Petitioner/Plaintiff

2.Sankar : 2<sup>nd</sup> Respondent/2<sup>nd</sup> Respondent/  
2<sup>nd</sup> Respondent/Respondent/Defendant

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India to call for the records relating to the order dated 13.03.2015 passed in E.A.No.40 of 2014 in E.A.No.58 of 2013 in E.P.No. 8 of 2013 in O.S.No.98 of 2012 passed by the District Munsif Court, Aruppukottai, and set aside the same.

For Petitioners : Mr.V.Perumal  
For R1 : Mr.A.Balaji

ORDER

This memorandum of revision has been directed against the fair and decreetal order dated 13.03.2015 and made in E.A.No.40 of 2014 in E.A.No.58 of 2013 in E.P.No.8 of 2013 in O.S.No.98 of 2012 on the file of the learned District Munsif, Aruppukkottai.

2. The revision petitioners herein are the third parties to the suit in O.S.No.98 of 2012, which seems to have been filed by the first respondent Pushpavalli @ Pushpam. That suit was filed as against the second respondent for eviction and to surrender the vacant possession to the plaintiff. Eventually it was decreed ex-parte on 23.11.2012. On the strength of the decree dated 23.11.2012, the first respondent had taken out execution proceedings. During the pendency of the execution petition, the revision petitioners, who are totally strangers to the above suit, had originally filed an application in E.A.No.58 of 2013 under Order 21 Rule 97 CPC and Section 151 CPC to declare that they are absolute owners of the suit properties and to declare that the decree dated 23.11.2013 obtained by the first respondent/plaintiff is null and void and also to dismiss the E.P.No.8 of 2013 in



O.S.No.98 of 2012.

3. That application was contested by the first respondent, however it is still pending. During the pendency of the application, the revision petitioners had come forward with another application in E.A.No.40 of 2014 under Order 26 Rule 9 CPC and Section 151 CPC to appoint an Advocate Commissioner to note down the physical features of the suit properties and to file a report along with a plan. That application was dismissed by the court of first instance on the ground that there was no need for the appointment of an Advocate Commissioner.

4. What the revision petitioners would contend is that they had purchased a vacant site from the husband of the first respondent/decreed holder namely one Ramu by way of a Registered Sale Deed dated 09.08.1995, which was marked under Ex.P.1. It is seen from the impugned order that the revision petitioners after their purchase had also constructed a house in the said property. The decree had been obtained by the first respondent for eviction of the tenant from the dwelling house and not from the vacant site. Only on this ground, the court of first instance had found that there was no need for appointment of Advocate Commissioner for measuring the property or even for its identity.

5. The following crucial point arises for consideration of this Court for better adjudication for this revision petition:

"Whether the revision petitioners have in fact constructed a house in the vacant site?"

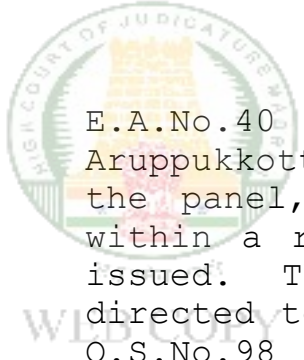
6. Only for the limited purpose, they have come forward with the above said application E.A.No.40 of 2014 to appoint an Advocate Commissioner. The learned counsel for the first respondent/decreed holder has fairly conceded that there is no objection on the part of the first respondent to appoint an Advocate Commissioner to find out the exact physical features of the suit property and to file a report. What he would suggest is that the execution petition in E.P.No. 8 of 2013 in O.S.No.98 of 2012 might be directed to be disposed of as expeditiously as possible.

7. This Court has considered the submission made on either sides.

8. Having regard to the related facts and circumstances of this given case on hand, this Court is of considered view that in the interest of justice, an Advocate Commissioner may be appointed for the purpose sought for by the revision petitioners in E.A.No.40 of 2014.

<https://hcservices.ecourts.gov.in/hcservices/>

9. Accordingly, this Civil Revision Petition is allowed and the impugned order is set aside and the application in



E.A.No.40 of 2014 is allowed. The learned District Munsif, Aruppukkottai is directed to appoint an Advocate Commissioner from the panel, which is being maintained on the file of the court within a reasonable time and to execute the warrant that may be issued. The learned District Munsif, Aruppukkottai, is also directed to dispose the execution petition in E.P.No.8 of 2013 in O.S.No.98 of 2012 after receiving objection from either side on the Advocate Commissioner's report, within a period of four months from the date of receipt of copy of this order. No order as to costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To,  
The District Munsif, Aruppukkottai.

+1CC to Mr.V.Perumal Advocate Sr.No.64432

+1CC to Mr.A.Balaji Advocate Sr.No.64321

GJM/AAL/MPA/21.12.2015-2P-4C

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