



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2016

CORAM:

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (MD) No.412 of 2015 (PD)
and
M.P. (MD) .No.1 of 2015

Lakshmanan

.. Petitioner/Petitioner/
Defendant

Vs.

Ganesamoorthy

.. Respondent/Respondent/
Plaintiff

Prayer : This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 06.02.2015, made in I.A.No.765 of 2014 in O.S.No.52 of 2008 on the file of the learned Additional District Munsif, Nanguneri.

For Petitioner : Mr.A.Arumugam

ORDER

This revision is directed against the order passed by the learned Additional District Munsif, Nanguneri in I.A.No.765 of 2014 in O.S.No.52 of 2008.

2. The petitioner as plaintiff instituted a suit against the respondent before the District Munsif Court, Nanguneri in O.S.No.52 of 2008 for declaration and permanent injunction. The respondent filed his written statement dated 08.08.2008 disputing the claim made by the petitioner in the plaint. Subsequently, the petitioner filed I.A.No.765 of 2014 in the suit for appointment of an advocate commissioner to measure the property with the help of the surveyor, contending that the defendant is disputing the case of the plaintiff that the property is situated in the natham poramboke. The application was resisted by the respondent by filing a counter.

3. The learned District Munsif dismissed the application holding that the trial in the suit commenced on 14.09.2010. Further, the plaintiff/PW1 did not appear before the Trial Court for cross-examination, so the suit was dismissed for non-prosecution on 30.10.2010. Subsequently, in I.A.No.500 of 2010, the case is re-opened and even thereafter for 10 hearings, he did not appear before the Court. Thereafter, the plaintiff filed I.A.No.30 of 2014 to implead his father as a party in the suit, which was dismissed on



03.04.2014, and that the present application filed after 7 years lacks bona fide.

4. Mr.A.Arumugam, learned counsel for the petitioner would submit that the petitioner is the plaintiff in the suit and the application for appointment of an advocate commissioner was rejected on the only ground that it was filed after the commencement of the trial and as per the decisions of this Court reported in **1996 (1) LW 278** and **2006 (5) CTC 501** a commissioner can be appointed at any stage for elucidation of facts in issue. The learned counsel further submitted that the defendant has filed written statement stating that the schedule of property is not correct and therefore to elucidate the facts in issue, the commissioner has to be appointed.

5. In ***Rangasamy v. The Superintending Engineer, TNEB, Mettur Electricity System, Mettur Dam, Salem District and others*** reported in **2006 (5) CTC 501**, the application filed for appointment of advocate commissioner was rejected on the ground that the commissioner cannot be appointed to collect evidence for the parties.

6. In ***A.Nagarajan v. A.Madhanakumar*** reported in **1996 (1) LW 278**, this Court has held in paragraph.5 as follows:

"5. 'For the purpose of elucidating facts in respect of any matter in dispute' means where the circumstances render it expedient in the interest of justice to do so, the Court has power, which is discretionary in nature, to appoint Commissioner for the purpose of ascertaining, to make it clear, intelligible and 'to throw light upon the matter in issue', means the main dispute as well as the facts leading to the dispute. This course may be adopted after the examination of the party or parties of *suo motu*. If the court feels that clarification or confirmation is necessary on certain aspects on which the Court entertains doubt in the matters in issue or dispute, or the disputed questions of fact, for the purpose of ascertaining, clarification, or for proper scrutiny and examination, this course can be resorted to. In *P. Moosa Kutty, In re* (AIR 1953 Madras 632= 66LW418) , this Court has held in any event, an application under this Rule must be made before the case is closed. In this view of the matter, appointment of a Commissioner can be resorted to after the evidence of the respective parties being placed. In *Ponnusamy v. Salem Vaiyappamalai Jangamar Sangam*, (AIR 1986 Madras 33 = (1985) 98 LW 112) this Court has taken the view that the party has got a right to place evidence which he could require to substantiate his case before the Court and, of course, subject to the



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law of evidence and the Code, and it is the duty of the Court to receive such evidence, unless there are other justifiable factors in law to decline to receive such evidence. The evidence so collected through the Commissioner may be used to elucidate a point which may otherwise be left in doubt or ambiguity on record. The Commissioner in effect is a projection of the Court appointed for a particular purpose."

7. In the case on hand the suit was filed for declaration and permanent injunction in the month of April, 2008. The respondent filed his written statement on 08.08.2008 denying the case of the plaintiff. It is not in dispute that the trial in the suit commenced on 14.09.2010 and the conduct of the petitioner shows that he was not interested for the disposal of the suit. It is seen that the suit was dismissed for non-prosecution on 13.10.2010 and even thereafter the petitioner did not appear before the Trial Court for cross-examination for 10 hearings. He also filed an application in I.A.No.30 of 2014 for impleading his father as a party to the suit.

8. In 2006 (5) CTC 501, this Court has categorically held that a local investigation is not for the purpose of collect evidence. There is no quarrel with regard to the proposition laid down in 1996 (1)LW278 that the court has got power to appoint an advocate commissioner for clarification of certain aspects, on which, if the court entertains the doubt in the matters in issue. Taking into consideration of the relief sought for in the suit and the stage of the case, the Trial Court has rightly dismissed the application. I do not find any merit in this revision.

9. Accordingly, this Civil Revision Petition is dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Additional District Munsif,
Nanguneri.

PJL
TE/NGM-MP/ : 21/06/2016 : 3P/2C