



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 20.09.2016

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

C.R.P (NPD) (MD) No.989 of 2016

and

C.M.P (MD) No.4891 of 2016

Krishnan

..Petitioner/Petitioner/Plaintiff

vs.

Rengaraj

.. Respondent/Respondent/Defendant

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair order and decreetal order passed in I.A.No.518 of 2015 in O.S.No.581 of 2004, dated 30.03.2016, on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

For Petitioner	:Mr.D.Muruganantham
For Respondent	:Mrs.Maria Roseline

ORDER

This Civil Revision Petition arises against the order passed in I.A.No.518 of 2015 in O.S.No.581 of 2004, dated 30.03.2016, on the file of the Principal District Munsif cum Judicial Magistrate, Lalgudi.

2. The revision petitioner/plaintiff has filed a suit in O.S.No.581 of 2004, before the Principal District Munsif cum Judicial Magistrate, Lalgudi for declaration and permanent injunction against the respondent herein / defendant. In the aforesaid suit, the petitioner has filed an application in I.A.No.518 of 2015 in O.S.No.581 of 2004 before the trial Court to appoint an Advocate Commissioner to inspect the suit property prescribed in the petition and to measure and note down the physical features of the suit property. The petitioner has specifically contended in the said application that to demarcate the suit property with reference to the documents of title and to find out nature and possession of the said property and to measure and find out the physical features of the suit property and the properties of the plaintiff and the defendant, the report of the Advocate Commissioner is required, which will avoid contradictory and unreliable oral evidence of the witnesses.

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3. The said application was dismissed by the trial Court.

Against that order, the present Civil Revision Petition is filed by the petitioner.

4. Per contra, the learned Counsel appearing for the respondent would submit that the suit was filed by the plaintiff in the year 2004. Now at the stage of commencement of trial, the petitioner, instead of proceed with the trial, filed the present application for appointment of Advocate Commissioner for inspection of the suit property and when the title and possession of the suit property is disputed, the same has to be proved by way of documentary evidence. Therefore, the question of appointment of Advocate Commissioner is not required in this matter. Further it is submitted that the trial Court, after considering the contention of the petitioner and the respondent, has rightly come to the conclusion that the application in I.A.No.518 of 2015 in O.S.No.581 of 2004 filed by the petitioner is dismissed by recording the reason that the said application is filed belatedly and regarding the possession of the property is concerned, it can be established only by way of oral and documentary evidences and therefore, the said aspect cannot be entertained in the interlocutory application filed for appointment of Advocate Commissioner.

5. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent and perused the materials available on record.

6. It is an admitted fact that the suit has been filed in the year 2004 initially for bare injunction and thereafter filed an application for amendment of prayer for declaration and permanent injunction. Thereafter, additional written statement has been filed. Subsequently, on 28.09.2015 issues have been reframed and posted for final disposal on 01.10.2015. At this juncture, the present application has been filed by the revision petitioner.

7. According to the learned Counsel for the petitioner, the Advocate Commissioner is required to be appointed on the basis of the statement made by the revision petitioner in the affidavit filed in support of the interlocutory application in I.A.No.518 of 2015. The trial Court has not appreciated the case of the petitioner that in order to solve the controversy arose among the parties, it will be just and necessary for this Court to have the report of the Advocate Commissioner. Further it is submitted that if the measurement of the property and the physical features of the property have been noted by the Advocate Commissioner, the trial Court can give a correct decision in this matter.

8. According to the learned Counsel for the respondent that there is no dispute with regard to the identity of the suit property with regard to the measurements of the suit property. This Court has already decided in various matters with regard to appointment of Advocate Commissioner.



9. In the decision in **Krishnamurthy T.K. Vs. Tamil Nadu Water and Drainage Board reported in 2006(5) CTC 178**, this Court, in para 9, has held as follows:

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"9. The report of the Advocate Commissioner alone can never be the basis for deciding the Suit as Commissioner should not be appointed to gather evidence to prove the case of the parties. Parties should prove their case by themselves by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. But in this case, Advocate Commissioner was sought for and appointed to gather the evidence to disprove the case of the revision petitioner in respect of a property which is not subject matter of the suit."

10. In another decision in **Chandrasekaran Vs. V.Doss Naidu reported in (2005) 3 M.L.J. 473**, wherein, this Court in para 10, 21 and 22, has held as follows:

"10. Countering the arguments, learned counsel for the respondent has drawn the attention of the Court to the number of documents filed along with the plaint and has submitted that in the light of the documents filed by the plaintiff and the earlier litigation, the appointment of Advocate Commissioner is not warranted. It is further submitted that the factum of possession and age of the trees are the main issues to be determined by the Court in the suit and the same cannot be delegated to the Advocate Commissioner. He has further submitted that the factum of possession is to be proved by adducing evidence.

21. The power under Art. 227 of the constitution is to be exercised by the Court in its discretion and cannot be claimed as of right by any party. Under Art. 227 of the Constitution of India, the well settled position is:-

(1) The High Court's power to revision under Art. 227 of the Constitution would be restricted to interference in cases of grave dereliction of duty or flagrant violation of law, and would be exercised most sparingly, in cases where grave injustice would be done unless the Higher Court interferes. It cannot be used as appellate or revisional power.

(2) The Power would not be exercised to correct an error of fact or of law, not being an "error of



law apparent on the face of the record", of an "irregularity or illegality of procedure" unless such error affects the jurisdiction, or involves a breach of the principles of natural justice; or to reappraise the evidence.

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(3) Nor will the High Court, in exercise of this power, substitute its own judgment for that of the inferior court, whether on a question of fact, or of law or interfere with the intra vires exercise of a discretionary power, unless it is "arbitrary or capricious" or unless there was no evidence at all on which the inferior Court could have come to the conclusion it did, or there was error of finding on a "jurisdictional fact". Whether the High Court found fault with the appellate court in declining to take into consideration certain documents and took them on record, instead of substituting its opinion on the merits of the case, it should have remanded the matter back for the opinion of the appellate Court, it being the final Court of fact.

(4) Nor can the High Court, nor being an appellate Court, pass an order of remand. In short, as regards findings of fact of the inferior Courts, the jurisdiction under Art.227 is limited to only examining whether the subordinate Court kept itself within the bounds of its authority in reaching the findings of fact. Consequently, the High Court cannot quash the judgment of the subordinate Court merely on the ground that its findings of fact were erroneous, but could do so only if the subordinate Court came to its conclusion without any evidence or upon a misreading of the evidence, or if its conclusions were perverse.

There is nothing to suggest that the impugned order is perverse or in violation of law warranting interference under Art.227 of the Constitution of India.

22. Upon consideration of the facts and circumstances of the case, learned District Munsif has rightly declined to appoint Advocate Commissioner to note down the physical features and thereby elucidating the factum of possession. The impugned order does not suffer from any material irregularity. This revision petition has no merits and is bound to fail. "

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11. In view of the above dictum laid down in the above decisions, in the case on hand, this Court cannot direct the



Advocate Commissioner to inspect the suit property and submit the report with regard to the collection of evidence. Therefore, this Court finds no reason to interfere with the order of the trial Court and the same does not warrant any interference of this Court.

12. In view of the fore-goings the Civil Revision Petition stands dismissed. Consequently, connected Miscellaneous Petition is dismissed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

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To

The Principal District Munsif,
Lalgudi.

+1cc to Mr.D.Muruganantham, Advocate Sr.No. 54797
+1cc to Mr.J.Maria Roseline, Advocate Sr.No. 54252

JAM/10.11.16/SKS-RR/5p-4cu

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