

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **17.04.2017**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.1053 of 2014

Durai Ramamoorthy : Petitioner

versus

Sachidanandam : Respondent

PRAYER: Revision filed against the order dated 3.1.2014, in I.A.No.297 of 2013 in O.S.No.189 of 2012 on the file of the Principal District Munsif, Chidambaram.

For petitioner :: Mr.A.Muthukumar

For respondent :: Mr.R.Sampath Kumar

ORDER

The interlocutory application filed by the petitioner for appointment of Advocate Commissioner to inspect the suit property and to file a report, was dismissed by the Trial Court primarily on the ground that already in a connected suit, Advocate Commissioner was appointed and the said report could be looked into for deciding the dispute involved in the subject suit. The said order is under challenge in this civil revision petition.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

3. The petitioner filed the suit for injunction. The suit was contested by the respondents by filing written statement.

4. The petitioner filed an application in I.A.No.297 of 2013 for appointment of Advocate Commissioner to inspect the suit property and report about its physical features. According to the petitioner, the respondents claimed possession in respect of a portion of the property and the same resulted in making the application for Commission.

5. The learned Trial Judge dismissed the application on the ground that in a connected suit between the same parties, Advocate Commissioner was appointed. The Advocate Commissioner submitted his report with respect to the adjacent property. It is the case of the petitioner that the Commissioner's report is not part of the present suit and as such, the Trial Court was not correct in rejecting the application on the ground of earlier report.

6. The suit in question is a simple suit for injunction. It is for the petitioner to plead and prove that he is in possession of the property in question. There is no question of issuing a Commission in a suit for injunction.

7. After hearing the learned counsel for the parties at length, I am of the view that interest of justice would be subserved by setting aside the order and remit the matter back to the learned Trial Judge for fresh consideration, after concluding the evidence. The order is set aside. The learned Trial Judge is directed to consider the application in I.A.No.297 of 2013 on merits and after conclusion of evidence. In short, it is open to the Trial Court to appoint an Advocate Commissioner, if the Court is of the view that report and plan would enable it to dispose of the matter on merits. In short, it is for the Trial Court to decide the necessity for issuing commission, after concluding the evidence of the parties.

8. The learned Trial Judge is directed to dispose of the suit as expeditiously as possible.

9. The civil revision petition is disposed of with the above direction. No costs. Consequently, M.P.No.1 of 2014 is closed.

17.04.2017

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K.K.SASIDHARAN, J.

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To

The Principal District Munsif, Chidambaram.

C.R.P.(P.D.) No.1053 of 2014

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