

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMAINAM

C.R.P.(P.D.) No.1487 of 2014

and

M.P.No.1 of 2014

1. Gurusamy
2. Shanmugam
3. Sellammal
4. Madhumathi

... Petitioners

Vs.

1. Kuppusamy
2. Mohan

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 06.02.2014 made in I.A.No.1391 of 2012 in O.S.No.162 of 2012 on the file of District Munsif Court, Sankari.

For Petitioners : Mr.R.Marudhachalamurthy

ORDER

The petitioners / plaintiffs filed the Civil Revision Petition challenging the order dated 06.02.2014 passed in I.A.No.1391 of 2012 in O.S.No.162 of 2012 on the file of District Munsif Court, Sankari.

2. The petitioners filed the suit for permanent injunction and during the pendency of the suit I.A.No.1391 of 2012 in O.S.No.162 of 2012 was filed seeking appointment of an Advocate Commissioner for a direction to note down the physical features of the entire suit property.

3. On reading of the plaint, it is clear that the description of the properties had been set out clearly and the suit itself was filed based on the description of the properties set out in the plaint. Further, it is the suit for permanent injunction and after filing the suit, the plaintiff cannot file I.A.No.1391 of 2012 in O.S.No.162 of 2012 seeking appointment of an Advocate Commissioner in order to collect further evidence or to develop his case. The practice of filing such petition seeking appointment of an Advocate Commissioner to collect evidences by parties has to be deprecated and now it becomes usual practice and such petitions are filed in order to delay the suit or to protract the case.

4. Order 26, Rule 9 of Code of Civil Procedure, unambiguously enumerates that “ in any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any *mesne profits* or damages or annual net profits the Court may issue a commission to such person as it thinks fit directing him to make such

investigation to report thereon to the Court.” The provision itself stipulates a condition that the Court should be satisfied that the appointment of an Advocate Commissioner is an eminent necessity warranting further investigation beyond the pleadings of the respective parties in the Suit. Therefore, the Courts ought to have *prima facie* find out whether there is any eminent necessity to appoint an Advocate Commissioner for effective adjudication of the Suit on hand.

5.The practice prevailing is that the parties are filing Petitions for appointment of Advocate Commissioners in a routine manner, either with an idea to collect further evidence or to prolong the Suit in one way or the other. Under these circumstances, it is the duty of the Courts to find out at the first instance the eminent necessity of appointment of an Advocate Commissioner in the matter on hand. If there is no *prima facie* circumstances made out by either of the parties filing the Application seeking for appointment of an Advocate Commissioner, the Court shall not delay the matter and should dispose of the same at the earliest possible without allowing the parties to protract the issue or get adjournment in order to keep the Suit pending for various reasons. The Court should not entertain such type of unnecessary petitions filed by either of the parties in the Suit, seeking appointment of Advocate Commissioner in a routine way. It is advisable that the Courts should be vigilant in proceeding with such

Applications filed with some intentions or other to get the Suit delayed. Hence, the Courts are to be cautious while dealing with such Applications and such Applications should be decided at the first instance without allowing the parties to take adjournments on flimsy grounds. Adjournments in such matters cannot be sought for by the parties as a right or preference and it is the duty of the Courts to see that such unnecessary adjournments are avoided and is to be denied. Adjournments can never be claimed as a right by the parties, and every adjournment has to be dealt with seriously by the Courts, which is to be granted only on satisfaction and on the ground of eminent necessity. Routine adjournments are to be denied by the Court if any such Applications are filed by the parties with an intention to delay the Suit or to collect evidence or to achieve their goal or till they achieve their purpose in the matter of getting favourable reports from the Advocate Commissioner.

6. In the case on hand, the Suit has been filed for permanent injunction and the description of properties are well set out in the Plaint. Therefore, either of the parties cannot seek for appointment of an Advocate Commissioner in order to collect further evidences or to find out or to establish their case before the trial Court. The very object of the Legislature is that the Courts in a circumstances where they are unable to find out the truth through the respective pleadings of the parties,

evidences and the documents filed there with, can appoint an Advocate Commissioner to find out the actual prevalence of the place or property in dispute, but not otherwise. In other words, the purpose of an appointment of an Advocate Commissioner is to remove the doubts and difficulties in the mind of the Court and not in the mind of the parties. The doubts in the mind of the parties has to be dealt with otherwise by the Court and the doubts of the parties raised in the Petition should not be entertained by the Court through appointing an Advocate Commissioner. Therefore, a prospective interpretation of the provision would be that the minds of the Court and its doubts and finding out the truth regarding the property or a place in dispute alone is to be considered while appointing an Advocate Commissioner. But the doubts and unclarity in the minds of the respective parties should not be considered as a ground for appointment of an Advocate Commissioner and it is the look after of the respective parties to collect evidence or produce documents or to adduce the evidence before the Court to establish their case. In other words, the Courts cannot be used as a tool by the parties to achieve their goal and therefore, the Courts are to be very cautious in appointing the Advocate Commissioner, since it helps the parties in one way or the other.

7. This Court is of the firm view that the appointment of an Advocate Commissioner is to be restricted and only when the Court finds it difficult to

proceed with the Suit in a particular circumstances, can entertain any petition or order for appointment of an Advocate Commissioner with specific reference. The Courts are to be very clear and the order of reference should be in an unambiguous terms. In fact, while making reference, the Courts must not only be specific but also definite. The real doubts arise in the mind of the Courts alone should be referred and the Courts should not include that the doubts of the parties as reference while appointing an Advocate Commissioner. In other words the Court should not give any scope for the parties to elaborate their pleadings or to collect further evidences in the subject matter of the Suit.

8.This Court is unable to find out any substantial necessity has been set out in the petition seeking appointment of an Advocate Commissioner, but the petition was filed to prolong the suit. Therefore the case on hand requires no consideration on merits and accordingly, the Civil Revision Petition No.1487 of 2014 is dismissed. No costs. Connected miscellaneous petition is closed.

11.01.2017

Index : Yes
Internet : Yes
mk/rpa

To

The District Munsif,
District Munsif Court,
Sankari.

S.M.SUBRAMANIAM,J.

mk

C.R.P.(P.D.) No.1487 of 2014

11.01.2017