

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD).No.1535 of 2014  
and M.P.No.1 of 2014

1.T.Sundaram

2.T.Selvam

... Petitioners

Vs.

1.Nallasami @ Kittusamy

2.Perumal

3.Parameswari

4.Varatharaj

5.The Sub Registrar,  
Sub Registrar Office,  
Anthiyur, Bhavani Taluk.

6.The District Registrar,  
District Registrar Office,  
Karungalpalayam, Erode - 638 003.

7.The Village Administrative Officer,  
Anthiyur Village,  
Bhavani Taluk, Erode District.

8.The Tahsildar,  
Taluk Office, Bhavani, Erode District.

9.State of Tamil Nadu  
rep by its District Collector,  
Perundurai Road, Erode.

... Respondents

(R5 to R9 were set exparte in the trial Court)

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.02.2013 made in I.A.No.1933 of 2012 in O.S.No.300 of 2012 on the file of the Principal District Munsif, Bhavani.

For Petitioners : Mr.C.Munusamy

### **ORDER**

This revision petition is filed challenging the fair and decreetal order dated 11.02.2013 passed I.A.No.1933 of 2012 in O.S.No.300 of 2012.

2.The revision petitioners are the plaintiffs in the suit in O.S.No.300 of 2012 for declaration and permanent injunction. During the pendency of the suit, an Interlocutory Application was moved before the trial Court seeking for appointment of an Advocate Commissioner under Order 26 Rule 9 and Section 151 of the Civil Procedure Code. The trial Court, considering the facts and circumstances, rejected the claim for appointment of an Advocate Commissioner mainly on the ground that the petition was filed in order to collect further evidence to establish the plaint contentions and the Court cannot appoint an Advocate Commissioner allowing either of the parties to collect further evidence for the purpose of establishing their respective pleadings.

3.The learned counsel appearing for the petitioners contended that there is genuine doubt existing with regard to the identity of the property and therefore, appointment of an Advocate Commissioner is eminent and necessary.

4.This Court is unable to appreciate the arguments advanced by the learned counsel appearing for the petitioners in view of the fact that it is a suit for declaration and permanent injunction. On a reading of the plaint, it is unambiguous that the description of the suit schedule properties are well set out. When the plaintiffs instituted a suit, it is their duty to establish their case through documents and oral evidences before the trial Court. The parties cannot be allowed to collect further evidence through appointment of an Advocate Commissioner to establish their case before the trial Court. The application seeking appointment of an Advocate Commissioner cannot be entertained in a routine manner to find out certain truth or otherwise or to collect further evidence for the purpose of proving their case. The Courts are to be cautious in appointing an Advocate Commissioner. A Commissioner may be appointed if the Court gets a doubt regarding the facts and circumstances of the case and further, such investigation is required for the effective adjudication of the suit. In the absence of any doubt in the minds

of the Court, the Court cannot appoint an Advocate Commissioner in a routine way. The parties instituting a suit or the defendants cannot approach the Court for appointment of an Advocate Commissioner in order to collect evidence or for the purpose of developing their case. Such attitude of the parties are deprecated and the trial Court has rightly rejected the petition seeking for appointment of an Advocate Commissioner and there is no infirmity in the order passed by the trial Court.

5. Accordingly, the fair and decretal order passed in I.A.No.1933 of 2012 in O.S.No.300 of 2012 dated 11.02.2013 is confirmed and the Civil Revision Petition in C.R.P.(PD).No.1535 of 2014 is dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Index : Yes/No  
Internet : Yes  
va

**23.02.2017**

To

1.The Principal District Munsif,  
Bhavani.

**S.M.SUBRAMANIAM,J.**

va

**C.R.P.(PD).No.1535 of 2014  
and M.P.No.1 of 2014**

**23.02.2017**

**<http://www.judis.nic.in>**