

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2017

CORAM:

The Hon'ble Mr.Justice S.M.Subramaniam

C.R.P.(PD) No.1631 of 2014

and

M.P.No.1 of 2014

Palanivel

...Revision Petitioner

Vs.

1. A.Murugan

2. C.Angaiya

3. K.Chitra

...Respondents

Civil Revision Petition, filed under Article 227 of the Constitution of India, against the fair and final order passed by the learned District Munsif Court, in I.A.No.1984 of 2013, in O.S.No.237 of 2002, dated 28.02.2014.

For Revision Petitioner : Mr.B.Vijay

For Respondents 1 &2 : Mr.V.Manohar

For Respondent-3 : No appearance

COMMON ORDER

The eight defendant in O.S.No.237 of 2002, on the file of the District Munsif Court, Ambattur, is the revision petitioner herein.

2. The plaintiffs filed the above suit for the relief of declaration, mandatory and permanent injunction. During the pendency of the suit, the

defendants 1 and 8 filed an Interlocutory Application, in I.A.No.1984 of 2013, for appointment of Advocate Commissioner to measure and locate suit 'A' 'B' and 'C' schedule properties with the assistance of an Assistant Engineer, National Highways, Chennai. The said Application was opposed by the plaintiffs, by filing a counter affidavit, *inter alia* contending that the Application is vexatious and it has been filed with a view to drag on the suit proceedings. The trial Court, in and by its order, dated 28.02.2014, dismissed the application. Aggrieved over the same, the eight defendant has filed the present Civil Revision Petition.

3. Mr.B.Vijay, the learned counsel for the revision petitioner contended that the suit is for the relief of declaration, permanent and mandatory injunction, and both the parties to the suit were unable to adduce any useful documents for the purpose of conducting fair trial, and therefore, appointment of Advocate Commissioner is imminent to present the case in a proper manner before the trial Court. Therefore, the learned counsel prays for setting aside the order passed by the trial Court, in dismissing the application.

4. Mr.V.Manohar, the learned counsel for the respondents 1 and 2 contended that, it is a dispute between two private parties with regard to the landed properties, for which, assistance of an Assistant Engineer, National

Highways, Chennai, is not at all required. Further, by appointing an Advocate Commissioner, the revision petitioner is attempting to collect evidence to establish the case, otherwise, descriptions of the suit schedule properties are clear, and it is the bounden duty of the plaintiffs to establish their case before the trial Court. Such being the factual position, the present Civil Revision Petition is devoid of merits, and it has to be dismissed *in limine*.

5. I am unable to accept the contention of the learned counsel for the revision petitioner. Appointment of Advocate Commissioner is required only in the event of any genuine doubt arisen in the mind of the Court, and without clearing the doubt, effective adjudication cannot be made by the trial Court. Therefore, the satisfaction of the Trial Court is imminent necessity. Simultaneously, the Courts have to be cautious, while appointing Advocate Commissioner, because, now the parties are frequently filing applications, seeking appointment of Advocate Commissioner, in one way or other, to achieve their goals to establish their case through the report of the Advocate Commissioner. Such practice being adopted by the parties has to be deprecated, as the Court cannot be a party to the suit to collect evidence by means of appointing an Advocate Commissioner. The scope of appointment of Advocate Commissioner is widened, and while widening the scope, the Courts have to be cautious, since the Court cannot be used as a tool by the parties for collection of

evidence and it is always open to parties to the suit to adduce both oral and documentary evidence before the trial Court for effective adjudication of the suit. Therefore, I do not find any illegality or perversity in the order passed by the trial Court. Accordingly, the fair and decreetal order passed in I.A.No.1984 of 2013, dated 28.02.2014, is confirmed.

6. In the result, the Civil Revision Petition is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

24.02.2017

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Index : Yes/No

To

The District Munsif Court, Ambattur.

S.M.Subramaniam, J.

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