

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 09.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

CIVIL REVISION PETITION (PD) No.3496 of 2014
and
M.P.No.1 of 2014

Venugovindha Uadiayar

.. Petitioner

vs.

Dhandapani

.. Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decretal order dated 01.08.2014 made in I.A.No.80 of 2014 in O.S.No.251 of 2013 on the file of the District Munsif Court of Dharapuram and allow the C.R.P.

For Petitioner ... M/s.N.Subha

For Respondent ... Mr.N.Ponraj

O R D E R

The present revision petition is filed, challenging the fair and decretal order dated 01.08.2014 in I.A.No.80 of 2014 in O.S.No.251 of 2013 rejecting the petition seeking appointment of an Advocate Commissioner.

2. The suit in O.S.No.251 of 2013 was filed by the respondent herein for declaration and mandatory injunction. I.A.80 of 2014 seeking appointment of an Advocate Commissioner was filed by the petitioner/defendant on the ground that the identity of the property is to be noted down by the Advocate Commissioner to establish the truth regarding the suit schedule property.

3. The trial Court, considering the facts and circumstances of the case, categorically found that the description of the suit schedule property is well set out in the plaint itself and further, it is for the plaintiff to establish his case by producing all relevant documents and by adducing necessary evidence at the time of trial. On the facts and circumstances, the trial Court rejected the petition seeking the appointment of an Advocate Commissioner.

4. The learned counsel for the petitioner contended that the petitioner/first defendant filed the petition seeking appointment of an Advocate Commissioner only with a view to collect further evidence to establish his case and the trial Court has rightly rejected the same. This apart, there is no necessity for an Advocate Commissioner, since the plaintiff has to establish his case

through evidence and documents. Hence, the trial Court has rightly rejected the application.

5. The learned counsel for the respondent opposed the contention of the learned counsel for the petitioner by stating that the identification of the property is necessary in order to establish the truth regarding the suit schedule property. Therefore, the rejection of petition is erroneous.

6. Considering the rival submissions made both by learned counsel for the petitioner and the learned counsel for the respondent, this Court is of the view that the appointment of an Advocate Commissioner shall not be made in a routine manner, since the same should not be supportive to either of the parties to the suit. Parties shall not be permitted to have an assistance of an Advocate Commissioner for collection of further evidence in the suit. When the plaint contains the description of the suit schedule property, it is the bounden duty of the plaintiff to establish his case by producing necessary documents and by adducing evidence to that effect. The Court cannot extend any assistance to any of the parties by appointing an Advocate Commissioner for collection of evidence or to establish his case one way or the other.

S.M.SUBRAMANIAM,J.,

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7. Such being the proposition, the parties should not be allowed to have the assistance of an Advocate Commissioner in order to establish their case or strengthen the suit. The case on hand pertains to the suit for declaration and mandatory injunction and on a plain reading of the plaint, it is clear that the description of the suit schedule property is well set out.

8. Therefore, appointment of an Advocate Commissioner is unnecessary and the parties are filing such petitions either to delay the suit or to collect further evidence. Such practice is to be deprecated and the trial Court has rightly rejected the petition seeking the appointment of an Advocate Commissioner.

9. Accordingly, the fair and decreetal order passed in I.A.No.80 of 2014 in O.S.No.251 of 2013 is confirmed and the present civil revision petition is dismissed. No order as to costs.

09.02.2017

Index:Yes

Internet:Yes

To

The District Munsif Court of Dharapuram

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