

SIN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.R.P. (PD) No.44 of 2014 &
M.P.No.1 of 2014

1.Raja

2.Santhi

3.Sevatha

.. Petitioners

-vs-

1.Manickavalli

2.Somu

3.Chandran

4.The Commissioner
Dharmapuri Municipality
Dharmapuri.

5.The District Environmental Engineer
Tamil Nadu Pollution Control Board
Hosur, Krishnagiri District.

.. Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 12.09.2013 made in I.A.No.717 of 2013 in O.S.No.1 of 2009, on the file of the District Munsif Court, Dharmapuri.

For Petitioner : Mr.V.R.Annagandhi

For Respondents : Mr.S.C.Vishwanath-R1 to R3

No appearance for R4 & R5

ORDER

This Revision Petition has been filed challenging the fair and decreetal order passed in I.A.No.717 of 2013 in O.S.No.1 of 2009 dated 12.09.2013.

2.The Suit has been filed for bare injunction and the plaintiffs in the Suit filed an Interlocutory Application for appointment of an Advocate Commissioner, to find out the physical features and the metes and bounds set out in the suit scheduled items.

3.The trial Court considering the facts and circumstances of the case, rejected the Interlocutory Application, mainly on the ground that the Suit itself has been filed for bare injunction and the plaintiffs have to prove their case based upon the pleadings and evidence and further the parties need not be allowed to collect

evidence to prove their case.

4.This Court is of the opinion that in a Suit for bare injunction, when the pleadings are set out in the Plaint and the description of the properties are very much available in the Plaint itself, there is no necessity for appointment of an Advocate Commissioner, more specifically, the plaintiffs after the initiation of the Suit cannot seek an appointment of an Advocate Commissioner to find out the physical features available in the suit schedule.

5.None of the parties are to be allowed to collect the evidence through the Advocate Commissioner for establishing their case. Such an attitude of the parties should be deprecated and the Courts cannot be used as a tool to collect evidence or to establish the facts and circumstances of the case. The person who files the Suit has to establish his case by adducing oral and documentary evidence before the Trial Court. The Court has to consider whether the appointment of an Advocate Commissioner is absolutely necessary or not for effective adjudication of the case. Such being the the intention of the provision, the Courts cannot be used for the purpose of collection of evidence and accordingly, there is no infirmity in the order passed by the trial Court.

5. Accordingly, the order passed in I.A.No.717 of 2013 in O.S.No.1 of 2009 dated 12.09.2013, is confirmed and the Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.02.2017

rpa

To

1. The learned District Munsif,
Dharmapuri.

S.M.SUBRAMANIAM, J.,

rpa

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