

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.273 of 2015
and
M.P.No.1 of 2015

K.Ezhilarasan

.. Petitioner

vs

Karuppathal

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 24.11.2014 passed by the learned District Munsif, Udumalpet in I.A.No.1672 of 2014 in O.S.No.624 of 2008.

For Petitioner : Mr.N.Thiagarajan

For Respondents : Mr.N.Umapathy

ORDER

The plaintiff is the revision petitioner. Being aggrieved by the order passed by the Court below in appointing an Advocate Commissioner, by allowing the application filed at the instance of

the respondent/defendant, in a suit for permanent injunction, the present revision has been preferred.

2. Heard both sides.

3. The case of the defendant is that during the cross examination of the plaintiff, it was stated by the plaintiff that the suit lands were lying fallow; whereas the defendant has stated that the lands were in cultivation. Therefore, in order to ascertain whether there is any cultivation done in the suit lands, the application was filed by the defendant for appointing an Advocate Commissioner to visit the suit property and to note the physical features with particular reference to the cultivation done. The said application was allowed by the Court below, which is now under challenge in this revision.

4. Admittedly, when the evidence of the plaintiff is over, the defendant has come up with the above application to appoint a Commissioner and to gather evidence through the report. When the suit itself is only for a permanent injunction, not to disturb

the peaceful possession of the plaintiff, appointment of a Commissioner, that too, at the instance of the defendant is totally irrelevant. It is the plaintiff, who has to establish his possession to succeed in a suit. The trial Court has appointed the Commissioner without application of mind and beyond the scope of the suit.

5. It is also a settled principle that an Advocate Commissioner cannot be appointed to collect evidence.

6. Though the learned counsel appearing for the respondent/defendant submitted that the Commissioner had already visited the suit property and also filed his report, even presuming that the report of the Commissioner has already been filed, it will not vitiate the right of the revision petitioner/plaintiff. Further when the appointment of the Commissioner itself is not sustainable, the report filed by him would automatically become non-est in the eye of law.

7. In such circumstances, the order dated 24.11.2014 passed by the learned District Munsif, Udumalpet in I.A.No.1672 of 2014 in O.S.No.624 of 2008 is set aside and the Civil Revision Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

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vj2

Index : Yes/No

Internet: Yes

To

The District Munsif, Udumalpet

PUSHPA SATHYANARAYANA,J.,

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