

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2017

CORAM :

THE HONOURABLE MR.S.M.SUBRAMANIAM

C.R.P(PD).No.572 of 2014
and M.P.No.1 of 2014

1. Arumugam
2. Rani

.. Petitioners

Vs.

1. Prema
2. Srilekha

.. Respondents

Prayer:- Civil Revision Petition is filed under Article 227 Constitution of India against the fair and decreetal order dated 09.10.2013 passed in I.A.No.631 of 2013 in O.S.No.167 of 2009 on the file of the learned District Munsif, Madurantagam

For Petitioners : Mr.K.Govi Ganesan

For Respondents : Mr.R.S.Mohan

ORDER

The Civil Revision Petition is filed challenging the order dated 09.10.2013 passed in I.A.No.631 of 2013 in O.S.No.167 of 2009 on the file of the learned District Munsif, Madurantagam.

2. The petitioners are the defendants in the suit and the respondents are the plaintiffs, who filed O.S.No.167 of 2009 for the relief of declaration and recovery of possession.

3. During the pendency of the suit, the respondents / plaintiffs filed I.A.No.700 of 2009 seeking appointment of an Advocate commissioner and the said petition was closed on the ground that no proper steps had been taken by the petitioners therein. Subsequently, when the suit was listed for trial, once again the respondents / plaintiffs filed an another application in I.A.No.306 of 2012 for the same prayer for appointment of an Advocate Commissioner.

4. The respondents therein filed a counter opposing the petition stating that the suit was posted for trial and further the schedule of properties set out in the plaint and the descriptions therein was clear and there is no ambiguity. Such being the case, the respondents / plaintiffs had filed a petition after another for appointment of an advocate commissioner only with an intention to protract the issue and to prolong the suit.

5. The learned counsel appearing for the respondents contended that the arguments advanced by the learned counsel for the petitioners are unacceptable, since the appointment of an advocate commissioner is eminent and necessary for effective adjudication of the suit. Further, along with the application, the local surveyor report is also enclosed. Therefore, the appointment of an advocate commissioner is to be allowed.

6. The trial court considered and passed the order with a finding that in order to prove the case, the respondents / plaintiffs filed a petition seeking appointment of Advocate commissioner and accordingly the petition was allowed.

7. This Court is of the view that the reasons set out by the trial court for allowing the petition to appoint an advocate commissioner is unsustainable on the ground that the trial court made a finding that in order to prove the case, the respondents / plaintiffs filed a petition seeking appointment of commissioner and accordingly the same was

allowed. The said finding is perverse, prima facie and the Court cannot appoint an advocate commissioner allowing either of the parties to collect their evidence in order to prove their respective pleadings and the courts cannot be used as a tool to collect evidence through an advocate commissioner. The finding of the trial court that the petition was filed by the respondents / plaintiffs in order to prove their case itself prima facie not acceptable and the same will certainly prejudice the other parties in the suit. The appointment of commissioner is only for the purpose of assisting the Court for the effective adjudication of the suit and not to collect the evidence or to establish the respective pleadings of the parties to the suit.

8. The Courts are to be cautious while allowing such petition seeking appointment of advocate commissioner, since the same will cause prejudice to either of the parties. In view of this, this Court is inclined to consider the grounds of the Revision filed by the petitioners and accordingly, the fair and decretal order passed in I.A.No.631 of 2013 in O.S.No.167 of 2009 dated 09.10.2013 is set aside and the Civil Revision Petition is allowed. It is made clear that the parties to the suit are at liberty to establish their respective cases by producing necessary

evidences, oral and documentary in accordance with law. Consequently,
connected miscellaneous petition is closed. No order as to costs.

22.02.2017

Index: Yes/ No
Internet : Yes/ No

ssd

To

The learned District Munsif,
Madurantagam

S.M.SUBRAMANIAM,J.,

ssd

C.R.P(PD).No.572 of 2014
and M.P.No.1 of 2014

22.02.2017

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