

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.01.2017

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.(PD)No.895 of 2014
& M.P.No.1 of 2014

1.Natesa Padayachi
2.Ramesh

..Petitioners/Plaintiffs

-VS-

1.V.C.Ramalingam
2.V.C.Rajalingam
3.Anjalai

.. Respondents/Defendants

The Civil Revision petition has been filed under Article 227 of the Constitution of India against the order in I.A.No.240 of 2013 in O.S.No.290 of 2011 on the file of the Additional District Munsif Court, Chidambaram, dated 12.12.2013.

For Petitioners : Mr.A.Muthukumar
For Respondents : No Appearance

ORDER

The present revision petition has been filed by the plaintiffs against the order dated 12.12.2013, made in I.A.No.240 of 2013 in O.S.No.290 of 2011, on the file of the Additional District Munsif Court, Chidambaram.

2. The petitioners/plaintiffs filed the suit for a decree of declaration regarding the title of the suit schedule property and for consequential injunction. During the pendency of the suit, the petitioners/ plaintiffs filed I.A.No.240 of 2013, seeking appointment of an Advocate Commissioner to inspect and measure the suit property with the help of the qualified surveyor and note down the physical features of the suit property and further direct the Commissioner to submit the report along with plaint. The Trial Court, considering the facts and circumstances of the case passed an order on 12.12.2013, rejecting the claim of the petitioner on the ground that the petitioners/plaintiffs have to prove their title by producing the relevant documents and the evidences and further it has been held that they cannot collect evidence through the Advocate Commissioner and by

stating so, the Trial Court dismissed the petition. Challenging the said dismissal, the present revision petition has been filed.

3. Though notice was duly served to the respondents, none appears on behalf of the respondents. Heard the learned counsel for the petitioners.

4. Considering the arguments advanced by the learned counsel for the petitioners this Court is of the firm view that the appointment of an Advocate Commissioner cannot be a tool for collection of evidences or to improvise the suit filed by the parties. Either of the parties cannot file any petition seeking appointment of Advocate Commissioner in the absence of relevant factors to be decided. Order XXVI Rule 9 of CPC is unambiguous that in any suit in which the court deems a local investigation to be a requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court. The intention of Order XXVI Rule 9 of CPC is unambiguous and if the Court deem it fit to appointment a Commissioner the same has to be done. The parties are not at liberty to move a petition to appoint the Commissioner in a routine manner, to identify or measure the suit schedule property.

5. In the case on hand, learned counsel for the petitioner contended that though the identification and the measurement of the suit property is not known to the petitioners/plaintiffs and there are some discrepancies in the suit schedule properties, that paved the way to the defence despite the claim of the plaintiffs and that is the reason for seeking appointment of the Commissioner. This Court is of the view that a person who files the suit himself has to be clear about his rights and the description of the properties. In other words, a person cannot be allowed to sustain the suit with much discrepancies. The attitude of the parties shows that they are filing the plaint with ambiguous contents and after filling of the suit and after noticing the contents of the defence, they are filing petition after petition either for appointment of Commissioner or seeking amendment of plaint only with an idea to improvise the case as well as to protract the suit. None of the parties can be allowed to achieve their mischievous goals by filing frivolous petitions. Further, the parties cannot be allowed to acquire any evidence or to improvise the case by filing petition seeking appointment of an Advocate Commissioner. The provision under Order XXVI Rule 9 of CPC is unambiguous that if the Court deems a legal investigation to be reasonable or appropriate for the purpose of elucidating the facts in the matter in dispute. Therefore, the Trial Court ought to have kept this

in mind that in case where the appointment of Commissioner is necessary, the court have to find out the genuine necessity and the Court cannot allow the parties to develop the case or secure the evidence infavour of either of the parties in the suit. In other words, if the trial court feels that it is just and necessary to find out the identity or physical features of the property in question, the Court can appoint an Advocate Commissioner. While appointing an Advocate Commissioner the court must adopt a balanced approach by not supporting either of the parties in the suit.

6. In other words, the report of the Advocate Commissioner or the reference made in the order of an appointment of Advocate Commissioner is to be clear with regard to the matters to be verified by the Advocate Commissioner in the filed. Further, the Court has to be cautious while making reference to the Advocate Commissioner and further no reference can be made in support of either of the parties in the suit. But now the parties are advised to file petition after petition for appointment of Advocate Commissioner in a mechanical manner in order to achieve their goal and to create further evidence to establish their rights in one way or other. Therefore, this Court is of the firm opinion that the intention of the legislators is to see that the Courts gets a clear picture regarding the schedule of the properties or any other discrepancies to adjudicate the matter in an effective manner and not to assist either of the parties to collect any evidence in favour of the respective parties. Such being the intention of the legislators now the provision cannot be allowed to be misused or wrongly used by the parties to the suit. Hence, this Court is not inclined to consider the present petition seeking appointment of advocate commissioner and the petitioners/plaintiffs has to prove the case through pleadings set out in the plaint and he cannot travel beyond a reasons assigned by the Court to find out the discrepancies or otherwise in respect of the suit schedule properties.

7. In view of the foregoing, the present Civil Revision Petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

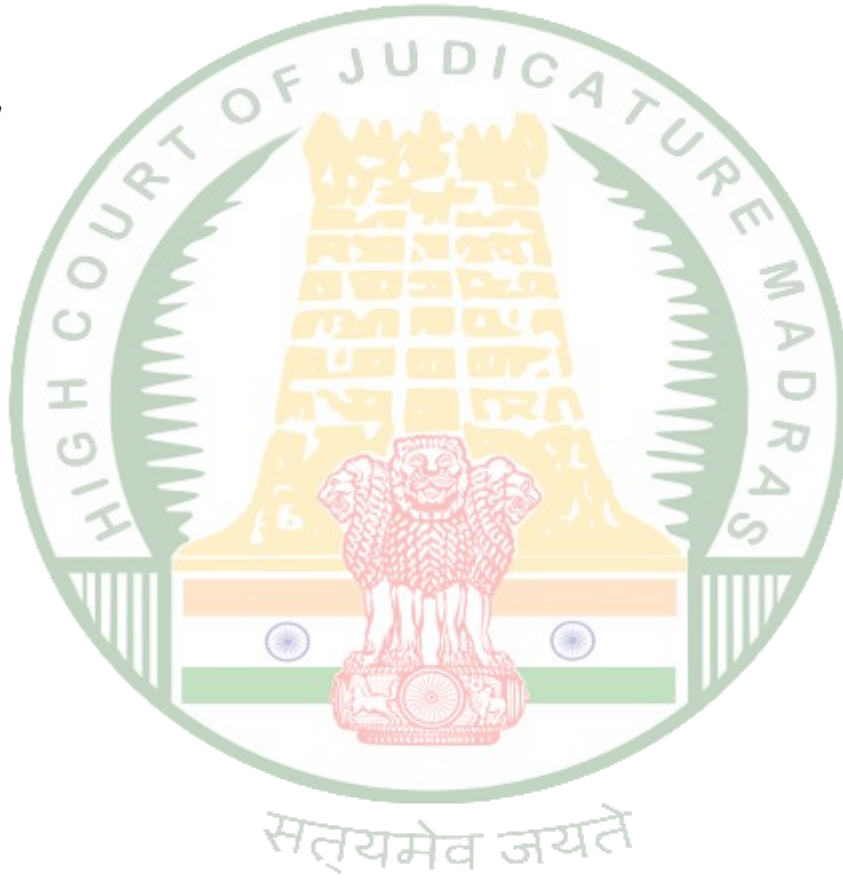
To

The Additional District Munsif,
Chidambaram.

+ 1 cc to M/s. A. Muthukumar, Advocate Sr.2751

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