

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2128 of 2012
and
M.P.No.1 of 2012**

K.Elangovan

.. Petitioner

Vs.

1.The Municipality, Thiruvarur,
Represented by its Commissioner,
South Main Road,
Thiruvarur.

2.M.Sooriyamurthy

3.K.Dhakshinamurthy

4.A.Veeraian

5.A.Dekshinamoorthy

(Since Respondents 2 & 4 remained
exparte the Court below, notice
may be dispense with for them)

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal orders passed in I.A.No.174 of 2012 in O.S.No.81 of 2011, dated 14.03.2012, on the file of the District Munsif, Thiruvarur.

For Petitioner : Mr.A.Muthukumar

For Respondents : No Appearance

ORDER

The revision petitioner herein is the plaintiff in O.S.No.81 of 2011 on the file of the learned District Munsif Court, Thiruvarur. He has filed the said suit for mandatory injunction to remove the alleged encroachment made by the respondents 2 to 5 herein over the suit schedule property viz a public path way belonging to 1st respondent, Thiruvarur Municipality.

2.It is the revision petitioner case that the public path way described in the suit schedule property belonging to the 1st respondent Municipality is under encroachment of the respondents 2 to 5. Therefore out of the encroachment over public path way being adjacent to plaintiff's house, plaintiff faced much hardship and inconvenience; hence the above suit was filed by the revision petitioner.

3.The respondents 2 and 4 herein, two of the alleged encroachers remained ex-parte and the respondents 3 and 5 filed written statement denied the allegation of encroachment and the 1st

respondent filed the written statement stating that there is no encroachment.

4. In the said circumstance the revision petitioner filed an Interlocutory Application under Order 26 Rule 9 of CPC in I.A.No.174 of 2012 seeking appointment of Advocate Commissioner to make local inspection to note down the physical features of the suit property and to measure the same and submit a report. The said application was dismissed by the Trial Court holding that the 1st respondent Municipality has filed written statement stating that there is no encroachment and further holding that the application is made belatedly. The said order is under challenge herein.

5. I heard Mr.A.Muthukumar, learned counsel for the petitioner and perused the entire materials available on record. There is no representation on behalf of the respondents.

6. On perusal of records it is seen that it is the specific case of the revision petitioner that the public street under the maintenance of the 1st respondent Municipality is under encroachment.

7. In the said circumstance the 1st respondent filed written statement contenting that there is no encroachment and basing upon the same, the revision petitioner's application was dismissed.

8. In my considered view the Trial Court has committed grave error in basing and relying upon pleadings of the 1st respondent merely because the 1st respondent Municipality/Local Bodies is local body and therefore its version is to be taken true and irrefutable.

9. It is needless to say that this Court as well the Hon'ble Apex Court through plethora of decision has held that appointment of Advocate Commissioner in a suit for mandatory injunction for removal of encroachment will always enable the Court to arrive at proper decision. In simple words appointment of Advocate Commissioner will enable the Court to visualize the actual ground reality through a detailed sketch and report.

10. In as much as the finding of Trial Court that the application is made belatedly, I am of the considered opinion that only after filing of the written statement, the petitioner would be able to explore the stand of the 1st respondent.

11.In this regard, it is important to state that the 1st respondent herein has specifically pleaded that the revision petitioner should have filed an application seeking for appointment of an Advocate Commissioner to demonstrate this case.

12.For the forgoing reason the impugned order is liable to be set aside.

13.In this result:

(a) the civil revision petition is allowed by setting aside the order passed in I.A.No.174 of 2012 in O.S.No.81 of 2011, dated 14.03.2012, on the file of the learned District Munsif, Thiruvarur,

(b) the trial Court is directed to appoint an Advocate Commissioner within a period of 15 days from the date of receipt of a copy of this order and further directed the Advocate Commissioner to inspect and file a report within a period of one month thereafter;

(c) on filing the Advocate Commissioner report, the trial Court is directed to dispose of the suit within a period

of three months thereafter. No costs. Consequently,
connected miscellaneous petition is closed.

27.02.2017

Note: Issue order copy on 25.01.2019

Internet: Yes

Index: Yes

vs

To

The District Munsif, Thiruvarur.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.2128 of 2012
and
M.P.No.1 of 2012

27.02.2017

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