

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.07.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2517 of 2012
and
M.P.No.1 of 2012**

D.Nallathambi

.. Petitioner

Vs.

1.Rajammal

2.Chinnasamy

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order dated 11.01.2012 passed in I.A.No.2529 of 2011 in O.S.No.507 of 2004, on the file of the Principal District Munsif, Coimbatore.

For Petitioner : Mr.C.Srivatsan

For Respondents : Mr.Ramalingam
for M/s.Ramalingam Associates

ORDER

The plaintiff is the Civil Revision Petitioner before this Court, challenging the order in I.A.No.2529 of 2011 in O.S.No.507 of 2004, dated 11.01.2012, on the file of the Principal District Munsif, Coimbatore.

2.The case of the respondent/plaintiff is that he has filed the suit against the defendants for permanent injunction, pending suit the defendants have filed a petition in I.A.No.2529 of 2011 under Order 26 Rule 9 and Section 151 of CPC.

3.It is the case of the defendants is that their counsel was cross examined the plaintiff on 07.09.2011 and at that time only the plaintiff has told that he has filed the suit only for the vacant site. As per the part performance of the written agreement, he constructed sheds and used it as a fodder stocking place in furtherance of the agreement, as he was in actual possession and enjoyment of the suit property from the date of the agreement. The 1st defendant also states in its affidavit that therefore in the above circumstances it is just and necessary to note down the physical features of the suit property and the Advocate

Commissioner should be inspected the property. Therefore, the defendants have filed the application for appointment of the Advocate Commissioner for the above purpose.

4. On receipt of the notice in the above applications in I.A.No,2529 of 2011, the plaintiff has filed the counter by denying the allegations set out in the affidavit. The plaintiff also states that the trial of the suit has already commenced and the matter is now at presently at the stage of arguments. At this stage, the defendants have filed the present application only to create an evidence and that too at a belated stage.

5. The plaintiff also states that the defendants have not even pleaded what purpose the Advocate Commissioner should be appointed in this case and how the Advocate Commissioner report will be helpful in the said issue in dispute. Therefore, the plaintiff prayed the Court for dismissal of the petition.

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6. Considering both side arguments, the learned Principal District Munsif, Coimbatore was pleased to allow the application and appoint the Advocate Commissioner as prayed for in the petition. Challenging

the said order, this Civil Revision Petition has been filed before this Court.

7.I heard Mr.C.Srivatsan, learned counsel appearing for the petitioner and Mr.Ramalingam, learned counsel appearing for the respondents and perused the entire records.

8.Admittedly, the suit was filed for permanent injunction against the defendants. Though the suit has been posted in the stage of arguments, at that time, the defendants have filed the petition for appointment of Advocate Commissioner.

9.The Court has considered the petition filed by the defendants and the Advocate Commissioner was appointed. The reason has been given only by the learned Judge if the Advocate Commissioner has been appointed that will helpful for the Court for contesting the case. I already decided in the case of **B.Amudha v. Anandhi Sankara Narayanan** reported in **2016 (3) MWN (Civil) 614**, that the Advocate Commissioner can be appointed even in the suit filed for permanent injunction and the said judgment is squarely applicable in this case.

10. Therefore, as per the above judgment the learned Judge is correctly ordered for appointment of Advocate Commissioner and appointing the Advocate Commissioner even in the suit filed for permanent injunction has no prejudiced would be caused to the respondent/plaintiff. Therefore, this Court not warranting interference in the well considered order passed by the learned Principal District Munsif, Coimbatore in I.A.No.2529 of 2011 in O.S.No.507 of 2004, dated 11.01.2012.

11. In the result:

(a) this Civil Revision Petition is dismissed by confirming the order passed in I.A.No.2529 of 2011 in O.S.No.507 of 2004, dated 11.01.2012, on the file of the learned Principal District Munsif, Coimbatore;

(b) the trial Court is directed to issue appropriate orders to the Advocate Commissioner to inspect and measure the property by giving notice to the parties and file report within a period of one month from the date of passing orders by the learned Judge;

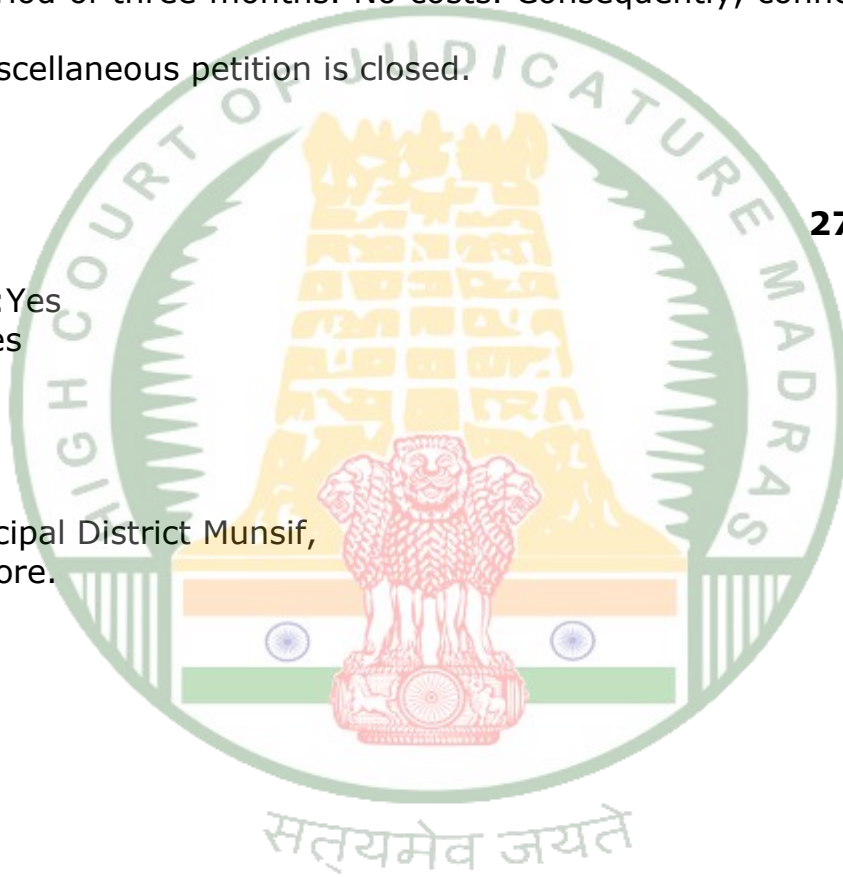
(c) on filing the report by the Advocate Commissioner, the trial Court namely the Principal District Munsif, Coimbatore is directed to dispose the suit within a period of three months. No costs. Consequently, connected miscellaneous petition is closed.

27.07.2017

Internet:Yes
Index:Yes

vs

To
The Principal District Munsif,
Coimbatore.



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M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(PD)No.2517 of 2012
and
M.P.No.1 of 2012

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