

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.02.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) No.3166 of 2013 and
M.P.No.1 of 2013

Dhandapani

.. Petitioner

vs

1.Rajalakshmi
2.Rangayya Naidu
3.Selvaraj
4.Vijayalakshmi
5.Indira

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India against the order 10.6.2013 passed in I.A.No.63 of 2013 in O.S.No.176 of 2009 on the file of the Additional District Munsif Court, Cuddalore.

For Petitioner : Mrs.G.Sumithra

for M/s.Abrar Mohamed
Abdullah

For Respondents : Mr.P.Mani

ORDER

This Civil Revision Petition is directed against the order of the learned Additional District Munsif, Cuddalore in I.A.No.63 of 2013 in

O.S.No.176 of 2009 dated 10.6.2013, allowing the petition filed under Order 26, Rule 9 of C.P.C., appointing the advocate commissioner to inspect the suit property with the help of surveyor to measure and note down the physical features of the same and file a report.

2. The respondents, who are plaintiffs have filed I.A.No.63 of 2013 to appoint an advocate commissioner with the help of surveyor to measure and note down the physical features of the suit property alleging that they have filed the suit for declaration and permanent injunction. It is averred that the respondents have purchased the properties under various sale deeds and are in open, continuous possession of the suit properties for more than the statutory period. The petitioner, who is the adjacent owner of the suit properties came with a group of men and attempted to trespass into the suit properties and also claimed ownership of the teak trees without any right or whatsoever. When the respondents suggested to the petitioner that they could measure the suit properties and the adjacent properties belonging to the petitioner with the help of surveyor, he had refused to co-operate. Hence, it is necessary to appoint an advocate commissioner to inspect the suit properties with the help of the surveyor and find out whether the teak trees are within the boundaries

of the suit properties and file a report.

3. Resisting the petition, the petitioner filed counter stating that advocate commissioner cannot be appointed to collect evidence and the respondents have no right or title to the suit properties. It is stated that the respondents are not in possession and enjoyment of the suit properties for more than the statutory period. There was no trespass as alleged and the claim of ownership of teak trees by the respondents is without any right and prayed for dismissal of the petition.

4. Upon consideration of the rival submissions, the trial Court allowed the petition appointing the advocate commissioner to inspect the suit properties with the help of surveyor and file a report. Aggrieved by the same, the petitioner has filed the present revision.

5. Assailing the appointment of advocate commissioner, the learned counsel for the petitioner submitted that the trial Court ought to have seen that the Hon'ble Apex Court has held in a catena of decisions that an advocate commissioner cannot be appointed for the purpose of creating evidence. He would submit that since the suit for

declaration and injunction, the respondents are duty bound to prove their claim by documentary evidence and cannot seek for an appointment of advocate commissioner. The learned counsel further submitted that the conclusion of the trial Court that it is necessary to demarcate the properties is without any legal basis and prayed for setting aside the order of the trial Court.

6. Per contra, the learned counsel for the respondents contended that in order to find out the exact features of the land and also whether teak trees are within the boundaries of the suit properties, the trial Court appointed advocate commissioner and there is no infirmity in the order of the trial Court and thus, prayed for dismissal of the revision.

7. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

8. The grievance of the respondents is that they have planted 130 teak trees in the suit properties and the petitioner, who is the adjacent land owner on the eastern side, came with a group of men

and had attempted to trespass into the suit properties with the guise of cutting down the teak trees. Therefore, it is necessary to appoint an advocate commissioner.

9. The trial Court while allowing the petition arrived at a conclusion that it is absolutely necessary to note down the physical features of the suit properties as the measurement was in question. Though the petitioner disputed the right and title of the respondents over the suit properties, the same cannot be decided in an application filed seeking appointment of advocate commissioner.

10. It is true that advocate commissioner cannot be appointed to collect evidence. However, on a reading of pleadings, this Court is of the view that it is necessary to demarcate the properties of the respondents and the petitioner and also it is necessary to note down the physical features of the suit properties with the help of surveyor and find out whether the teak trees are within the boundaries of respondents properties. If the advocate commissioner along with the surveyor inspected the suit properties and filed report, no prejudice would be caused to the petitioner. Moreover, the report of the advocate commissioner will reduce oral

evidence of both sides considerably. Therefore, we find that the trial Court was right in appointing the advocate commissioner to inspect the suit properties with the help of qualified surveyor and find out whether teak trees are within the boundaries of the respondents' properties. Considering the facts and circumstances of the given case, this Court find that there is no illegality and perversity in the order of the trial Court and the Civil Revision Petition is liable to be dismissed.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed. The trial Court is directed to pass appropriate orders directing the advocate commissioner to file his report on his inspection with the help of surveyor within a period of one month from the date of such order as per the commission warrant already issued. On filing the report before the trial Court, the trial Court is directed to dispose of the suit within a period of three months thereafter.

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vs

Note: Issue order copy on 22.01.2019

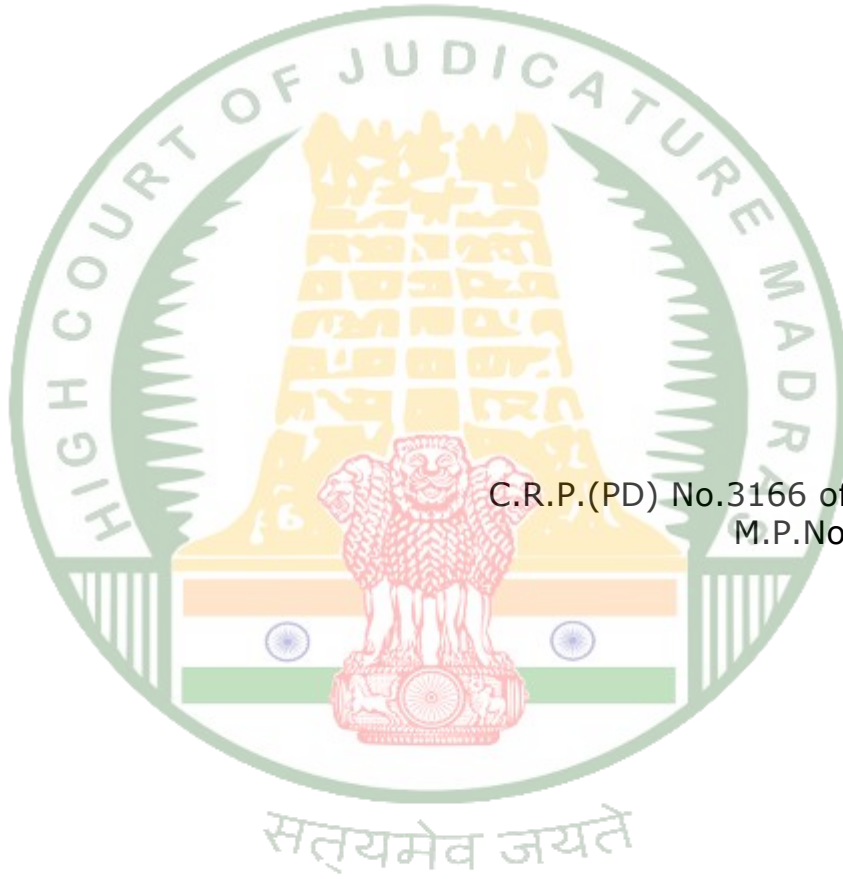
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To

The Additional District Munsif,
Cuddalore.

M.V.MURALIDARAN, J.

VS



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