

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Dated: 08.02.2017**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN**

**CRP(PD)No.4707 of 2013  
and  
M.P.No.1 of 2013**

Krishnamoorthy

.. Petitioner

Vs.

1.Muthupaiyan  
2.Thangaraj

..Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.08.2013 made in I.A.No.656 of 2013 in O.S.No.432 of 2007, on the file of the Additional District Munsif Court, Tiruchengode.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.P.Valliappan

**ORDER**

The case of the revision petitioner is that the respondent /plaintiff filed a suit against revision petitioner for declaration and mandatory injunction in O.S.No.432 of 2007, on the file of the District

Munsif Court, Tiruchengode. In the said suit the plaintiffs stated that, there was a car track in the suit property and the same was destroyed by the defendant and for that a police complaint was given by the plaintiffs. Therefore, the plaintiffs sought for the relief of mandatory injunction to form 12 feet car track in the suit property. The revision petitioner herein as defendant filed written statement and contended as follows. The defendant admitted the existence of suit car track, but denied the fact of destroying the same. The defendant further contended that the plaintiffs are not entitled to use the said car track.

2. During the pendency of suit, the defendant filed an application in I.A.No.656 of 2013 to appoint an advocate commissioner to note down the existing physical feature and particularly the existence of the east-west 15 feet broad car track branching from Ilanagar Panchayat road on the west and running towards east abutting plaintiffs' land on the south and to file a report with plan. The plaintiffs resisted the application seeking for appointment of an advocate commissioner. The learned trial judge after elaborate discussion, has dismissed the application filed under order 26 rule 9 of CPC by order and decree dated 29.08.2013. The order rejecting appointment of an advocate commissioner is under

challenge in this revision petition.

3.I heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.P.Valliappan, learned counsel appearing for the respondents. I have also perused the entire available material on record.

4.In a suit for declaration and mandatory injunction, the defendant/ revision petitioner took out an application in I.A.No.656 of 2013 to appointment of an advocate commissioner to note down the physical features of the suit cart track. The revision petitioner stated that the suit car track is clearly mentioned in Ex-A1. The revision petitioner further contended that the suit car track is running through Survey Numbers 230/2, 230/3, 230/1, and the same is in existence as on today. Though the revision petitioner herein admitted the existence of suit car track, denied the right of the plaintiffs to use the suit car track.

5.The learned counsel for respondent herein argued that the suit car track was destroyed by the revision petitioner herein and therefore the relief of mandatory injunction was sought for to form the suit car track. The present application to appoint an advocate

commissioner is filed at the stage of arguments and the same is filed only during the proceedings.

6. This court has considered the rival submissions. When the revision petitioner/ defendant admitted the existence of suit car track, the question of visiting the suit property to note down physical feature by appointing advocate commissioner does not arise. There is no necessity for the commissioner to inspect the suit car track when the existence of the same is admitted by both parties. Further, it is seen from the records that the suit is posted for arguments and at that stage the defendant/ the revision petitioner filed application to appoint an advocate commissioner and same cannot be entertained. While dismissing the application seeking for appointment an advocate commissioner, the trial court has rightly observed that the existence of suit car track in survey numbers 230/1, 230/2, 230/3 is admitted by the revision petitioner as well as the respondent herein and therefore no commission is needed to be appointed. Further, it is for the plaintiffs to establish his case by producing relevant documents and for the purpose of collecting evidence no commission could be appointed.

7. The Trial Court has got discretion to order a Commissioner or

not and such discretion should be exercised judicially. The report of the Commissioner is only a piece of evidence and it is not binding on the Court. In this case, the Trial Court has exercised discretion Judicially and the same is not warranted interference by this court.

8.In view of the above discussion, this Court is of the considered opinion that the order under challenge in this revision need not be disturbed. Accordingly this civil revision is liable to be dismissed.

9.In the result:

(a) this civil revision petition is dismissed confirming the order and decree passed in I.A.No.656 of 2013 in O.S.No.432 of 2007 dated 29.08.2013, on the file of the Additional District Munsif Court, Tiruchengode;

(b) the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to both parties and to dispose of the suit within a period of two months;

(c) both the parties are hereby directed to cooperate

for early disposal of the suit. No cost. Consequently,  
connected miscellaneous petition is closed.

**08.02.2017**

Note: Issue order copy on 28.04.2017  
Internet: Yes/No.  
Index: Yes/No.

vs

To

The Additional District Munsif Court,  
Tiruchengode.

**M.V.MURALIDARAN, J.**

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