

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 8.3.2017

CORAM

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.P.(PD) No.785 of 2012

and

M.P.No.1 of 2012

Ramasamy

... Petitioner

Vs

Subramaniya kounder

... Respondent

This Civil Revision Petition is filed under Article 227 of Constitution of India against the order, dated 6.9.2011 passed in I.A.No.1543 of 2010 in O.S.No.78 of 2010 on the file of the learned Principal District Munsif, Tindivanam.

For Petitioner : Mr.G.Baby

For respondent : Mr.D.Ravichander

ORDER

1 This is plaintiff's revision.

2 Plaintiff and defendant are neighbouring land owners.

Plaintiff is owner of 'A' Schedule property. 'B' Schedule property is part of 'A' Schedule property. Permanent injunction with respect to A schedule property and mandatory injunction with respect to B schedule property as against the defendant. Defendant owns the land on the Southern side of the suit property. Plaintiff alleged that defendant is trying to make construction in 'B' Schedule property. Thus, plaintiff sought for injunction with respect to 'A' and 'B' schedule properties as against the defendant.

3 After his appearance, before filing the written statement, defendant filed I.A.No.1543 of 2010 seeking appointment of an Advocate/Commissioner to inspect the suit property with the help of a Surveyor and file his report.

4 Aggrieved, the plaintiff has directed this revision.

5 The learned counsel for the plaintiff/revision petitioner would submit that before filing the written statement, an Advocate/Commissioner cannot be appointed because it will enable the defendant to gather evidence and accordingly make his defence.

6 In this connection, the learned counsel for the revision petitioner would cite **Renuka Devi and another vs. Velmurugan (C.R.P.(PD) No.794 of 2012 dated 9.1.2015)** (unreported).

7 The learned counsel for the defendant/ respondent would contend that the Court is not denude of its power to appoint an Advocate/Commissioner at any stage of the suit. Even before filing the written statement if the situation so warrants, the Court can appoint an Advocate/Commissioner at any stage of the suit.

8 In this connection, the learned counsel for the respondent would cite **Pillaiyar vs Ganesan and another [2000 (1) CTC 279]**.

9 I have anxiously considered the rival submissions, perused the materials on record and the decisions cited.

10 In **Renuka Devi and another vs. Velmurugan** (supra) a learned Judge of this Court took the view that before filing the written statement if the defendant is allowed to have appointment

of an Advocate/Commissioner, it will enable him to abuse the process of the Court to gather evidence through an Advocate/ Commissioner and based on such evidence, the defendant will build his defence.

11 In **Ponnusamy v. Salem Vaiyappamalai Jangamar Sangam (1985(1) MLJ 380) : AIR 1986 Mad 33**, the appointment of an Advocate/Commissioner was sought for by the defendant in a suit for injunction to restrain the defendant from digging a foundation in plaintiff's land. The defendant contended that the land belonged to him. Trial Court refused to appoint an Advocate/Commissioner. This Court held as under:

"A controversy, as we would see from the pleadings, has arisen as to whether the constructions put up by the third defendant are within his land or whether they have encroached into the lands of the plaintiff. A local investigation is the best way to find out the position and the party, viz. the third defendant coveting the evidence to place before the court through local investigation by the Commissioner cannot be shut out of that right".

12 In **John v. Kamarunissa (AIR 1989 Ker, 78)**, it was held as under:

"If the court is required to wait till the written statement is filed, then the court will be deprived of a precious opportunity of bringing on record facts of great relevance for just and proper decision of the dispute. Moreover, for filing written statement the defendant will have to go through the plaint as well as the plaintiff's documents. All that it will take time. In the meantime, if certain facts are necessary to be ascertained there can be no legal bar to the issue commission."

13 In **Appulu v. A.Fatima Zohra and another, [1996 L.W 369 : 1982 TLNJ 482]**, it was held by this court that, "there may be very many circumstances in which only a commissioner inspecting the property promptly and recording timely assessment of what obtains relating to the building, could alone assist courts to decide correctly. If such prompt actions are not taken, it may destroy the valuable right of the parties. It may so happen, when a landlord high-handedly starts pulling down a portion of the main building, the tenant would be greatly interested in securing a commissioner appointed forthwith. If the right of the tenant to have access to staircase is constructed, he is most interested in seeking appointment of the commissioner and secure immediate relief for restoring

amenities, which is assured to him under the Act..."

14 In **Pillaiyar vs. Ganesan and another [2000 (1) CTC 279]**, the learned Judge of this Court refused to deprive the Court's of its power to pass orders to appoint an Advocate/ Commissioner even before filing of the written statement if the situation so warrants.

15 If the situation is such that which enables a party to destroy the subject matter of the subject, make it non-est or even make the very filing of the suit a futile exercise or even make the suit a straw. In certain circumstances, ascertainment of actual physical structure/ features of the suit property as on date of the filing of the suit may be very important. In such circumstances, the Court need not wait till the filing of the written statement by the defendant to appoint an Advocate/ Commissioner.

16 In **Pillayar (supra)** the learned Judge after referred to **John (supra)**, **Ponnusamy (supra)** and **Appulu (supra)** and took the view that on reading the affidavit filed by the defendant if the Court sees the urgency of the matter, it can appoint an

Advocate/Commissioner even before filing of written statement and even before any evidence had come on record.

17 In view of the foregoing analysis, I am inclined to adopt the view taken in **Pillaiyar** (supra).

18 While I was at the close of this order, it is brought to my notice that now the suit itself has been disposed of on merits.

19 In the circumstances, this Civil Revision is dismissed. However, no order as to costs. Consequently, connected miscellaneous petition is closed.

8.3.2017

Speaking/Non Speaking order
Index : Yes
Internet: Yes
vaan/svn

To

- 1 The Principal District Judge,
Villupuram
- 2 The Principal District Munsif,
Tindivanam.

Dr.P.DEVADASS,J.

vaan

**C.R.P.PD.No.785 of 2012
and M.P.No.1 of 2012**

Dated: 8.3.2017

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