



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2017

CORAM:

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THE HONOURABLE MS.JUSTICE V.M. VELUMANI

CRP(MD).No.103 of 2017 and
CMP(MD).No.375 of 2017

V. Thangaraj : Petitioner/Plaintiff

Vs.

T. Subbulakshmi : Respondent/Defendant

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.11.2016 passed in I.A.No.333 of 2016 in O.S.No.283 of 2014 on the file of the Additional District Munsif, Tuticorin.

For Petitioner : Ms. Saji Bino

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated 21.11.2016 passed in I.A.No.333 of 2016 in O.S.No.283 of 2014 on the file of the Additional District Munsif, Tuticorin.

2. The revision petitioner is the plaintiff. The petitioner filed suit in O.S.No.283 of 2014 on the file of the Additional District Munsif, Tuticorin for injunction restraining the respondent from interfering with his peaceful possession and enjoyment of the suit property.

3. According to the petitioner, the suit property is a pathway measuring 4.61 Cents in the South west 20 ft. length in total extent of 5 acres 24 cents in S.No.489. The respondent is interfering with the enjoyment of the petitioner in pathway. Hence, he filed suit.

4. The respondent filed written statement and contesting the suit. The respondent denied the claim of the petitioner and stated that suit property is in S.No.490 belonged to respondent. Therefore, the respondent filed I.A.No.333 of 2016 for appointment of a surveyor to inspect the suit property with the help of Surveyor and fix the boundaries. According to the



respondent petitioner is not properly described the suit schedule property and boundaries mentioned in the suit property is not correct. The petitioner is trying to grab the property belonging to the respondent.

5. The petitioner filed counter and opposed the said application and denied the averments made by the respondent. The petitioner contested that the suit is for injunction and he will substantiate his case by oral and documentary evidence and therefore, appointment of Advocate Commissioner is not necessary.

6. The learned Judge considering the averments in the affidavit and counter affidavit and the fact that the respondent is disputing the description of the property and claim of the petitioner that suit property is in S.No.489, allowed the application and appointed Advocate Commissioner on the ground that it will avoid much oral evidence.

7. Against that the petitioner has filed the present Civil Revision Petition is filed.

8. The learned counsel appearing for the petitioner submitted that learned Judge failed to prove his claim by letting in oral and documentary evidence. The respondent by filing an application for appointment of Advocate Commissioner is trying to collect the evidence to prove his case.

9. I have heard the learned counsel appearing for the petitioner and perused the materials available on record.

10. The learned counsel appearing for the petitioner submitted that the petitioner filed suit for injunction and it is for the petitioner to prove his claim by oral and documentary evidence. The respondent is disputing that suit property is in S.No. 489. On the other hand, according to the petitioner, the suit property is in S.No.490 belonging to him. According to the respondent, the petitioner has given wrong boundaries and rough sketch with regard to the suit property is not correct. It is well settled in the suit for injunction, Advocate Commissioner need not be appointed. At the same time, it is also settled that when there is a dispute in the property, the Advocate Commissioner can be appointed. In the present case also, the learned Judge has allowed the application for appointment of Advocate Commissioner on the ground that there is a dispute with regard to the property.

12. In the circumstances, the learned Judge considered all the materials on record in proper perspective and has given cogent and valid reasons for allowing the I.A.No.333 of 2016 in O.S.No.283 of 2014 on the file of the Additional District Munsif, Tuticorin. The learned Judge has exercised his power conferred on him properly and there is no irregularity or illegality warranting interference by this Court.



13. In the result, the Civil Revision Petition is dismissed.
No costs. Consequently, connected Miscellaneous Petition is
closed.

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Sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

The Additional District Munsif, Tuticorin.

trp

AE/CM MSA/24.02.2017/3P/2C

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