



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.06.2017
(Reserved on 15.06.2017)

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CRP (PD) (MD) No. 1118 of 2017 and
CMP (MD) No. 5095 of 2017

Mrs. Sahila Krishnan ... Petitioner/Petitioner/Defendant

vs.

1) M. Nazar

2) M. Raman

3) The Nagercoil Municipality,
Rep. by its Commissioner,
Nagercoil Municipality,
Nagercoil,
Agasteeswaram Taluk,
Kanyakumari District.

4) The Tamil Nadu Government,
Represented by the District Collector
Kanyakumari District,
Collectorate,
Nagercoil.

5) Thankaraj ... Respondents/Respondents

Petition filed under Article 227 of the Constitution of India, against the order and decreetal order passed in I.A.No.52 of 2016 in O.S.No.85 of 2012 dated 09.01.2017 on the file of the Principal District Munsif Court, Nagercoil, Kanyakumari District.

For Petitioners : Mr. C. Godwin
For Respondent No.1: Mr. M. P. Senthil

ORDER

The revision petitioner is the 1st defendant in O.S.No.85/2012. The suit is filed for mandatory injunction directing the defendants 1 and 2 to remove the construction of compound wall and the iron barbed fence made over the suit schedule property bearing Survey No.757/1.

2. In the said suit, the plaintiff has taken out an interlocutory application for appointing Advocate Commissioner and to record the physical features. Accordingly, Advocate Commissioner



has inspected the suit property bearing S.No.757/1 and has filed his report. While so, the 1st defendant has taken out the present application to appoint an Advocate Commissioner to measure her property bearing S.No.757/7A.

3.The Trial Court has dismissed the petition on the ground that the property which the petitioner seeks to inspect is not the subject matter of the suit. When the Advocate Commissioner has already inspected the suit premises and submitted his report, appointing another Advocate Commissioner to inspect the 1st defendant's property which is not subject matter of the suit is unnecessary.

4.Aggrieved by that, the present revision petition is filed on the ground that there is no impediment to measure the revision petitioner's property in case of this nature when there is a dispute regarding the location of the compound wall.

5.In support of his arguments, the counsel for the petitioner relied upon the judgment of this Court reported in **1986 Madras 33** in the matter of **Pormusamy Pandaram vs. The Salem Vaiyappamalai Jangamar**.

6.Heard both sides. Perused the relevant records and the judgment cited by the learned counsel for the revision petitioner.

7.It is a case where the plaintiff has made a specific allegation that the defendants have encroached upon his property bearing S.No.757/1. Pursuant to that, the Trial Court has appointed the Advocate Commissioner and the report of the Advocate Commissioner is before the Trial Court for proper appreciation at the appropriate time. While so, seeking appointment of Advocate Commissioner to inspect the 1st defendant's property bearing S.No.757/7A is only a futile exercise. The Court is not going to decide upon the extent the defendant is in possession and whether it is in consonance with her title deed. It is the plaintiff's averment that his property has been encroached by the defendants is the subject matter for trial, and hence he has sought for Commissioner's appointment. The Commissioner's report is also before the Trial Court for appreciation. To decide the dispute, it is suffice to look at the report of the Commissioner who has inspected the suit schedule property. Hence, this Court finds no reason to interfere with the order passed by the Trial Court.

In the result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

<https://hcservices.ecourts.gov.in/hcservices/> /True Copy/

Sub Assistant Registrar



To

The Principal District Munsif,
Nagercoil,
Kanyakumari District.

+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 61145
+ 1 CC TO Mr.C.GODWIN, ADVOCATE IN SR No. 61009

NBI

TE/MR/SAR-I : 30/06/2017 : 3P/4C

order made in
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CMP (MD) No. 5095 of 2017
20.06.2017