



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

CORAM :

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

C.R.P. (MD) No. 312 of 2017

and

C.M.P. (MD) No. 1554 of 2017

Arankulavan

... Petitioner/Petitioner/Plaintiff

Vs.

Thilagavathi

... Respondent/Respondent/Defendant

PRAYER: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order passed in I.A.No.424 of 2016 in O.S.No.202 of 2014 on the file of the District Munsif Court, Aranthangi, dated 02.09.2016.

For Petitioner : Mr.K.Vamanan
For Respondent : Mr.N.Balakrishnan

O R D E R

This revision petition is directed against the dismissal of application filed under Order XXVI Rule 9 of C.P.C., seeking appointment of an Advocate Commissioner to inspect the suit property with village accounts, revenue records and measure the property with the help of Surveyor to correlate the document and the physical feature found.

2. The revision petitioner herein has filed the said application, in view of the report filed by the earlier Advocate Commissioner who had categorically stated in his report that insofar as to ascertain whether the defendant has encroached upon the plaintiff land, the revenue records and documents pertaining to the suit property has to be perused and the property has to be measured with the help of surveyor. In the said report, the Advocate Commissioner suggested that to find out whether there is any encroachment by the defendant on the land of the plaintiff, it will be appropriate to measure the said land with the help of surveyor and revenue records.

3. In the light of the said observation, the revision petitioner herein has taken the second application for appointment of an Advocate Commissioner to inspect the suit property with the help of Surveyor and to correlate the site with the revenue records. The learned District Munsif, Aranthangi has dismissed the application on the ground that the revision petitioner is



attempting to gather evidence to prove his case through Commissioner's report. It is also observed by the learned District Munsif, Aranthangi that the plaintiff can prove the occupied extent in the suit property by way of adducing oral and documentary evidence.

WEB COPY

4. This Court heard the learned counsel for the revision petitioner and the learned counsel for the respondent.

5. This Court finds there is some patent error in the observation and decision of the Court below which is impugned before this Court by way of revision. When the Advocate Commissioner appointed by the Court has opined the lis can be decided only if the suit property is measured with the help of surveyor and revenue records, there is no reason to suspect the intention of the revision petitioner and conclude this petition is filed only to gather evidence. It is the prime duty of trial Court to bear in mind that the best evidence available with the parties should be allowed to place before the Court for just and appropriate decision. Even, if the parties are not advised or failed to bring the best evidence, the Court is of the opinion that the best evidence if available elsewhere, the Court should make all endeavour to get it and appreciate the evidence in the light of the pleadings.

6. In this case, as pointed out by the Commissioner measuring the disputed site with revenue record and surveyor will give quietus to the dispute whether there is any encroachment upon the land of the plaintiff or not. If such exercise is undertaken, it will be of great assistance to the Court to decide the dispute. Therefore, this revision petition is allowed and the order passed by the trial Court in I.A.No.424 of 2016 in O.S.No.202 of 2014 dated 22.09.2016 is set aside. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To
The District Munsif,
Aranthangi.

+1cc to Mr.K.Vamanan, Advocate Sr.No.59717

MM/AKV

VB/MR/SAR3/20.06.2017/2P/3C