



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2017

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

WEB COPY

C.R.P. (MD).No.761 of 2017

and

C.M.P. (MD).No.3467 of 2017

Lakshmanan

... Petitioner/Petitioner/
Petitioner/Plaintiff

Vs.

1. Ayyarappa Nayakkar (Died)

2. Valli

3. Muthupandi

4. Veerapandi

5. Guru

6. Pandivel

7. Vinayagalakshmi

... Respondents/Respondents/
Respondents/ Defendants

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order dated 19.01.2017 made in I.A.No.1366 of 2016 in I.A.No.297 of 2004 in O.S.No.173 of 2003 on the file of the Principal District Munsif, Aruppukottai and thus render justice.

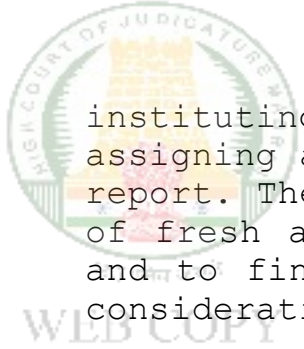
For Petitioner : Mr. S.Rajasekar

ORDER

The revision petition is directed against the disposal of the Interlocutory Application filed in I.A.No.1366 of 2016 under order 26 Rule 9 of Code of Civil Procedure for Appointment of Advocate Commissioner. The revision petitioner is the plaintiff in the suit filed in O.S.No.173 of 2003. At the time of instituting the suit the plaintiff has filed an application in I.A.No.297 of 2004 for appointment of Advocate Commissioner and the same was allowed and Commissioner has inspected the disputed property and has submitted report as early as on 12.06.2004. Pursuant to the order passed in I.A.No.297 of 2004, after 12 years, the plaintiff has taken out another application for appointing a new Advocate to note down the physical feature of the suit premises and also to find out how the sewage from the defendant's house is let out and whether there is an alternate way to let out the sewage. The revision petitioner has also questioned the report of the commissioner submitted earlier and to set aside the same.

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2. The defendants have objected the application on the ground that the said application has been filed after 12 years of



instituting the suit just to protract the proceedings without assigning any valid reason to set aside the earlier commissioner's report. The present application has been filed for the appointment of fresh advocate commissioner to note down the physical feature and to find out alternate way to let out the sewage deserves no consideration.

3. The Trial Court, after considering the relevant documents and the pleadings, has concluded that inspecting the suit premises after a lapse of 12 years from the date of instituting the suit is of no purpose. In all probabilities the physical features would have changed and it may not be same that were prevailing at the time of instituting the suit. Further, it was also observed by the Court below that the present application for appointing Advocate Commissioner has been taken out by the plaintiff, when the matter was taken up for arguments, after examining the witnesses.

4. Aggrieved by the impugned order, the present revision petition has been filed that the lower Court has failed to consider the fact that the earlier Advocate Commissioner report has failed to furnish the necessary details required by the Court to appreciate the facts existed on the date. The earlier commissioner's report dated 28.04.2004, bristles with defects, ambiguity and suppression of material facts.

5. The main contention of the revision petitioner is that the commissioner has not recorded in his report about the fact that the drainage from the defendant's house is drained out and it flows through the passage owned by the plaintiff. If the above reason is true, then the objection to the report as well as fresh application for appointment of new advocate commissioner ought to have been filed by the plaintiff at the earliest point of time i.e., immediately after the submission of the report by the commissioner on 28.04.2004. The application to appoint new advocate commissioner has been taken out not after completion of the trial, and when the matter was posted for argument. This indicates that the plaintiff, after completion of the examination of witnesses wants to make a roving enquiry through an advocate commissioner hence petition after 12 years. Since there is no requirement for appointment of Advocate Commissioner in such a belated stage the order of the Court below is just and proper. There is no reasonable ground to interfere the same.

6. Accordingly, the Civil Revision Petition fails and the same is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (Records)

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Principal District Munsif,
Aruppukottai

+1 CC to Mr.T.LAJAPATHI ROY, Advocate, SR No. 51959

SM/CP

PSM/MMS/04.05.2017/3P/3C

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