



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.02.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P. (MD) No.98 of 2017 (PD)

&

C.M.P. (MD) No.345 of 2017

1.Madheswari, W/o.Chockalingam

2.Sivakamasundari, S/o.Manikanda Raja

[The Petitioners are represented by

their Power Agent Balakrishnan,

S/o.Avudai Chettiar]

.. Revision Petitioners/Respondents/
Defendants

Vs.

Malarmani, W/o.Selvarasu

.. Respondent/Petitioner/Plaintiff

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.12.2016, passed in I.A.No.432 of 2016 in O.S.No.43 of 2016, by the learned District Munsif, Aranthangi.

For Petitioners : Mr.VR.Shanmuganathan

For Respondent : Mr.K.Baalasundharam

ORDER

This Civil Revision Petition has been filed against the fair and decreetal order dated 08.12.2016, passed in I.A.No.432 of 2016 in O.S.No.43 of 2016, by the learned District Munsif, Aranthangi.

2. The petitioners are the defendants and the respondent is the plaintiff in the suit in O.S.No.43 of 2016 on the file of the District Munsif Court, Aranthangi. The respondent filed the suit for permanent injunction restraining the petitioners from interfering with her peaceful possession and enjoyment of the suit property. The petitioners filed written statement and is contesting the suit. The respondent filed I.A.No.432 of 2016 for appointment of an Advocate Commissioner to inspect the suit property with the help of Village Administrative Officer and Surveyor and to measure the petition mentioned property and to note down the physical features and to submit a report with plan. According to the respondent, she is the owner of the suit property. The petitioners



pressurised the respondent to sell the suit property to them. The respondent refused to sell the suit property. Subsequently, the petitioners tried to interfere with the peaceful possession and enjoyment of the suit property. Hence, she filed the suit for permanent injunction. In the suit, she has also filed the I.A. for appointment of an Advocate Commissioner on the ground that the petitioners are trying to change the location of the suit property. The petitioners have also filed O.S.No.49 of 2016, before the District Munsif Court, Aranthangi.

3. The petitioners filed counter affidavit and denied all the averments made by the respondent and submitted that the respondent is not owner of the suit property and she is not in possession of the suit property. The petitioners are in possession and enjoyment of the suit property. The respondent has not correctly described the details of boundaries of the suit property and the first petitioner purchased the property in S.No.283/3C from one Dhanapal. The second petitioner has left to U.S.A. in the year 2014 and she has not come to India till now. The petitioners are not interfering with the possession of the respondent.

4. The learned District Munsif, Aranthangi, considering the averments made in the affidavit, counter affidavit and the materials available on record, allowed the application on the ground that there is dispute with regard to, who is in possession of the suit property and description of the suit property and if the Advocate Commissioner inspects the suit property and filed a report with the above details and physical features, unnecessary oral evidence can be avoided and the report of the Advocate Commissioner will be very helpful for the better appreciation of the main suit.

5. Against the said order dated 08.12.2016, the petitioners have come out with the present Civil Revision Petition.

6. The learned counsel for the petitioners submitted that the petitioners in the written statement, have denied that the respondent is the owner of the suit property and they have purchased the property from one Dhanapal. On the other hand, the respondent claimed that she is the owner of the suit property. In view of the said dispute, she has filed the present suit against the petitioners, for permanent injunction and the same is pending. It is well settled that in a suit for injunction, it is for the plaintiff to prove her possession and there is no necessity for appointment of Advocate Commissioner. The respondent is trying to collect evidence to prove her averments that she is in possession of the suit property. The judgments relied on by the learned counsel for the respondent before the learned District Munsif, are not applicable to the facts of the present case and prayed for allowing the Civil Revision Petition.

7. In support of his submissions, the learned counsel for the petitioners relied on the following judgments:



(i) **2014 (2) CTC 68 [Thangaraj Vs. Pappathi]**, wherein at paragraph 5, it has been held as follows:

"5. If at all the revision petitioner himself is not confident as to where the boundary line between the suit property and the adjacent poramboke land lines, he ought to have filed the suit for demarcation of the boundary and not for bare injunction. When the failure to give the boundaries of the suit property was made as a ground for holding that the revision petitioner could not have been in possession of the suit property, such a finding could not be sought to be nullified by seeking appointment of a Commissioner to fix the boundary after measuring the suit property."

(ii) **2008 (5) CTC 181 [Meenakshi Vs. Vennila and another]**, wherein at paragraph 9, it has been held as follows:

"9. At this stage, it is pertinent to point out that it is not the aim of Order 26, Rule 9 of C.P.C. to assist a litigant to collect evidence, where the litigant can get evidence himself. In the instant case, the Suit has been filed only for permanent injunction and as such in regard to the factum of possession, this Court opines that the lower Court alone can gather evidence through the parties to the litigation and therefore, the same cannot be entrusted to the Advocate Commissioner to gather evidence and in that view of the matter, the Civil Revision Petition fails and the same is hereby dismissed in the interest of Justice."

(iii) **2008 (3) CTC 597 [K.M.A.Wahab and 5 others Vs. Eswaran and another]**, wherein at paragraph 6, it has been held as follows:

"6. As far as the factum of possession is concerned, the Court alone gather evidence through the parties and it cannot entrust the said matter to the Advocate-Commissioner to collect the evidence. As held in the judgment reported in **Jabeen Taj Vs. M.Parveen Banu**, 2005 (3) MLJ 24, inasmuch as there is no dispute with regard to the identity of the property, the Trial Court has no reason to appoint Advocate-Commissioner. Similarly, in the other judgment reported in **Chandrasekaran and 6 others Vs. Doss Naidu**, 2006 (2) LW 159, it is held that though remuneration is paid by the party, who sought for appointment of the Advocate-Commissioner, as such no prejudice will be caused to the other side, is not at all relevant fact for appointment of the Advocate-Commissioner."



(iv) **2007 (1) MLJ 513 [Chinnathambi and others Vs. Anjalai]**, wherein at paragraphs 7 and 9, it has been held as follows:

"7. In a matter relating to investigation into the disputed question of fact of possession, the power of appointment of Commissioner for local investigation cannot be exercised by the Court to assist the party to collect evidence, where the party can collect evidence by himself. Thus in a case, where the claim of the plaintiff that, she is in possession of the disputed property is denied by the defendants by filing written statement, the disputed question of fact can be adjudicated upon by the Court, after framing of issues and recording evidence of the parties.

9. It is a well accepted principle of law that an Advocate-Commissioner should not be appointed to find out the possession of the property, which has to be adjudicated only by oral and documentary evidence."

8. The learned counsel for the respondent submitted that the petitioners are trying to change the location and physical features of the suit property and therefore, appointment of Advocate Commissioner is necessary to note down the physical features of the suit property. The learned District Munsif has given valid reason for appointing an Advocate Commissioner.

9. I have heard the learned counsel for the petitioners and the learned counsel for the respondent and perused the materials available on record.

10. The suit for injunction is filed by the respondent restraining the petitioners from interfering with her peaceful possession and enjoyment of the suit property. The petitioners have denied in the written statement that the respondent is the owner of the suit property and contended that she is not in possession of the same. On the other hand, the petitioners are contending that they are in possession of the suit property. Therefore, it is for the respondent to prove her possession and that the petitioners are interfering with her peaceful possession, by letting in oral and documentary evidence. In the circumstances, Advocate Commissioner cannot be appointed to inspect the suit property to note down the physical features. It will amount to collecting evidence on behalf of the respondent. The learned District Munsif erred in holding that there is no dispute as to who is in possession of the suit property. The learned District Munsif committed an irregularity in that finding. Therefore, the fair and decretal order of the learned District Munsif, dated 08.12.2016, passed in I.A.No.432 of 2016 in O.S.No.43 of 2016 is liable to be set aside and accordingly,



the same is set aside.

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

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Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The District Munsif, Aranthangi.

+ 1 CC TO Mr.K.BAALASUNDHARAM, ADVOCATE IN SR No. 8016

SMN2

TE/CM-MSA : 28/02/2017 : 5P/3C

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