



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.07.2018

DELIVERED ON : 02.08.2018

WEB COPY

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.310 of 2018

and

CMP (MD) No.1440 of 2018

Tamilarasan

.. Petitioner/Petitioner/Defendant

vs

Prasanna

.. Respondent/Respondent/Plaintiff

Revision Petition filed under Article 227 of Constitution of India against the fair order and decreetal order dated 13.11.2017 passed in I.A.No.830 of 2017 in O.S.No.35 of 2016 on the file of the District Munsif Court, Aranthangi.

For Petitioner : Mr.N.Balakrishnan

For Respondent : Mr.K.Balasundaram

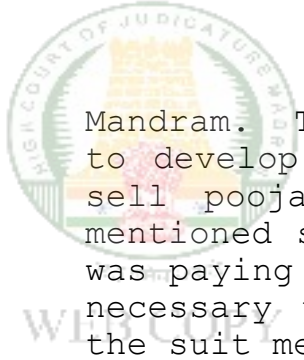
ORDER

This Civil Revision Petition is directed against the order dated 13.11.2017 passed in I.A.No.830 of 2017 in O.S.No.35 of 2016 on the file of the District Munsif Court, Aranthangi, dismissing the petition filed by the petitioner under Order 26, Rule 9 of C.P.C. The petitioner herein is the defendant and respondent is the plaintiff in the suit.

2. The respondent had filed the suit for eviction of the petitioner from the suit property and for arrears of rent.

3. Pending suit, the petitioner has filed I.A.No.830 of 2017 seeking to appoint an Advocate Commissioner to inspect the suit property to note down the physical features and to find out whether the suit property and shop are situated in one and the same premises or not and to submit a report.

4. In I.A.No.830 of 2017, the petitioner alleged that in the place of Shree Angeneya temple, the temple and the suit property were situated without any specific boundaries. Shree Angeneya temple was constructed by utilising own funds of the temple and also the temple had constructed shops with measurement of 75 x 12 feet. The petitioner is one of the members of Shree Angeneya Narpani



Mandram. The petitioner is a tenant in one of the shops and he used to develop Shree Angeneya temple and in the said shop, he used to sell pooja materials. According to the petitioner, the suit mentioned shop belonged to Shree Angeneya temple and the petitioner was paying rent only to the benefit of the temple. Therefore, it is necessary to appoint an Advocate Commissioner to find out whether the suit mentioned shop situated at the temple premises or not.

5. Resisting the petition, the respondent filed counter stating that the petitioner admitted that the suit schedule mentioned shop is a rental shop. Since the suit is one for eviction of the petitioner from the suit schedule mentioned shop, it is not necessary to appoint an Advocate Commissioner to inspect the property and the petitioner has filed the petition only to collect the evidence.

6. Upon consideration of the rival submissions, the trial Court dismissed the petition. Challenging the same, the petitioner has filed this Civil Revision Petition.

7. I heard Mr.N.Balakrishnan, learned counsel for the petitioner and Mr.K.Balasundaram, learned counsel for the respondent and also perused the materials available on record.

8. The learned counsel for the petitioner submitted that the trial Court erred in appointing the Advocate Commissioner and it is trite law that Advocate Commissioner's report and plan would help to elucidate the matter in dispute and save the precious time of Court from letting in laborious oral evidence.

9. The learned counsel for the petitioner further argued that the trial Court also erred in holding that there is no dispute regarding the identity of the suit property. Learned counsel argued that, in the interest of justice, an Advocate Commissioner has to be appointed and if an Advocate Commissioner is appointed and directed to inspect the suit property and note down the physical features, no prejudice would be caused to the respondent. In support of his submissions, the learned counsel cited the decision in *Shanmugathai v. Kamalammal and another*, reported in 2017 (2) CTC 353.

10. Per contra, the learned counsel for the respondent submitted that the trial Court had correctly dismissed the petition filed by the petitioner. He would submit that the petitioner has filed the petition to appoint an Advocate Commissioner only to collect the evidence and since the suit is for eviction, there is no necessity to appoint an Advocate Commissioner to note the physical features of the suit property. In support of his submission, the learned counsel relied upon the decisions in *Rangasamy v. The Superintending Engineer, TNEB*, reported in 2006 (5) CTC 501 and *K.M.A. Wahab and others v. Eswaran and another*, reported in 2008 (3) CTC 597.



11. Admittedly, the present suit has been filed by the respondent for the eviction of the petitioner from the suit schedule mentioned shop. There is no dispute that the petitioner is a tenant to the suit schedule mentioned shop. But the case of the petitioner is that the respondent is not the owner of the suit property and he is paying rent only to Shree Anjaneya Temple administration.

12. The grievance of the petitioner is that in order to find out the truth that the suit property is a rental shop or not and/or separate shop situated at the temple premises, it is necessary to appoint an Advocate Commissioner to note down the physical features of the suit property and also to ascertain whether the shop was situated in same premises or not and to submit a report.

13. The aforesaid prayer of the petitioner would clearly establish collection of evidence. Since the respondent filed the suit for eviction of the petitioner from the suit schedule mentioned shop alleging that he was a tenant under the respondent and the petitioner had committed default in payment of rent, it is the duty of the respondent to prove that there was a relationship of landlord and tenant between them and the petitioner had committed default in payment of rent.

14. As rightly observed by the trial Court, in the case on hand, there is no dispute with regard to the identity of the property. In such view of the matter, the real dispute involved in the suit is who is the owner of the suit schedule mentioned shop.

15. In *Shanmugathai v. Kamalammal*, supra, relied upon the by the learned counsel for the petitioner, this Court held that "noting down the physical features would not amount to culling out the evidence and it mandate on the part of the lower Court to appoint an Advocate Commissioner with a mission to visit the suit property with the help of the Surveyor and measure the same by referring to the survey map and documents of both sides and note down the physical features."

16. In the aforesaid case, suit has been filed for declaration, recovery of possession and mandatory injunction. The defendants therein, who are said to be encroachers, had disputed the title of the plaintiff. There is also dispute as to whether the construction put up by the defendants was within their property or in the suit property. In such circumstance, even though when suit was in part-heard stage, this Court directed the trial Court to appoint an Advocate Commissioner.

17. In the case on hand, as stated supra, there is no dispute with regard to the identity of the suit schedule mentioned shop. Therefore, the decision in *Shanmugathai v. Kamalammal*, supra, relied upon by the petitioner, will not apply to the case on hand.



18. According to the respondent, in order to collect the evidence, the petitioner has filed the petition to appoint an Advocate Commissioner and the trial Court was justified in dismissing the petition. In support, the learned counsel pressed into service the decisions in *Rangasamy v. The Superintending Engineer, TNEB* and *K.M.A.Wahab v. Eswaran and another, supra*.

19. In *Rangasamy v. The Superintending Engineer, TNEB, supra*, this Court held as under:

"7. The object of the local investigation under Order 27, Rule 9, is not to collect evidence. Such materials enable the Court to properly and correct understand and assess the evidence on record, which clarifies or explains any point, which is doubtful on the evidence on record. The Court shall not appoint an Advocate Commissioner for taking measurement of the suit properties in a mechanical manner without considering the need for appointment of an Advocate Commissioner. If the Court deems fit that local investigation is requisite or proper, for the purpose of elucidating the matter in dispute, then the appointment of an Advocate Commissioner is justified. If there is any doubt about the area of the land, identification or location of an object, then local investigation is necessary. In the instant case, there is absolutely no doubt about the location of the well in R.S.No.209/10 and that therefore, there is no necessity for measurement."

20. In *K.M.A.Wahab v. Eswaran and another, supra*, this Court held as follows:

"6. This Court has carefully considered the arguments put forth on either side. **Order 26, Rule 9, C.P.C.** states as follows:

9. Commissions to make local investigations.-- In any Suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made Rules as to the persons to whom such commission shall be issued, the Court shall be bound by such Rules.

It is evident from the above said provision of law that a Court may appoint a Commissioner in any Suit where it



deems a local investigation to be requisite for the purpose of elucidating any matter in dispute. It is necessary to point out in the affidavit filed in support of I.A. No.697 of 2006, it is stated by the respondent therein that he is alone in possession by cultivating the suit property and only to seek to find out the factum of possession, he sought for appointment of the Advocate-Commissioner under the pretext of taking of the physical features indirectly. Such reasons ought to have been rejected by the Trial Court as untenable. 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 v. 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 the Advocate-Commissioner. Similarly, in the other judgment reported in *Chandrasekaran and 6 others v. V. 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 factor for appointment of the Advocate-Commissioner."

21. When the identity of the property is not in dispute, the local inspection/investigation by the Advocate Commissioner is not required. It appears from the pleadings of the parties that the intention of the petitioner in filing the petition to appoint an Advocate Commissioner is to collect evidence and not otherwise. The report of the Advocate Commissioner would not help the real dispute involved in the case on hand as the dispute involved in this suit is landlord and tenant dispute. Therefore, this Court is of the view that the trial Court was right in dismissing the petition filed by the petitioner and there is no infirmity and/or perversity in the order of the trial Court. Further, no valid grounds have been made out to interfere with the order of the trial Court and the Civil Revision Petition is liable to be dismissed.

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

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

The District Munsif,
Aranthangi.

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Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.K.BAALA SUNDARAM, ADVOCATE IN SR No. 76818

VSV

TE/RP/SAR-3 : 21/08/2018 : 6P/5C

order made in
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