



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2018

CORAM:

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARANC.R.P. (PD) (MD) No.493 of 2018
and C.M.P. (MD) No.2162 of 2018

1. K.Ramamirtham
2. K.Thilagar
3. J.Shri Ragavendra
4. J.Shri Ram

... Petitioners/R1 to R4 / D1 to D4
-vs-

- 1.Mala Shankar

Rep. by her General Power of Attorney Holder,
T.Shankaralingam... 1st Respondent/Petitioner/Plaintiff

2. K.Jawahar
3. J.Uttham Kumar
4. J.Suresh Singh
5. S.Jaber Singh
- 6.J.Vasanthi Devi

... R2 to R6 / R5 to R9 / D5 to D9

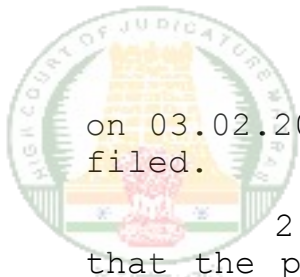
Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records of the learned I Additional District Munsif, Tiruchirappalli made in I.A.No.386 of 2015 in O.S.No.802 of 2015 and set aside the Fair and Decreetal Order dated 03.02.2018.

For Petitioners : Mr.B.Anandan

For R1 : Mr.V.R.Shanmuganathan

For R3 to R6 : Mr.R.Alagumani
For R2 : Died**O R D E R**

The Revision Petitioners are the defendants 1 to 4 in the suit in O.S.No.802 of 2015 on the file of the I Additional District Munsif, Tiruchirappalli and the suit was filed by the plaintiff for declaration that the Joint Venture Agreement is still in force, permanent injunction among other various reliefs. During the pendency of the suit, the plaintiff filed an application in I.A.No.386 of 2015 in O.S.No.802 of 2015 for appointment of an Advocate Commissioner to inspect the suit property, which was allowed by the learned I Additional District Munsif, Tiruchirappalli



on 03.02.2018. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioners / D1 to D4 that the plaintiffs did not approach the Court with clean hand and there is no whisper as to how the appointment of Advocate Commissioner will help the Court to come to a logical conclusion. It is the further case of the revision petitioners that when the sketch of the suit schedule property has not been produced by the plaintiff before the Court along with the plaint, there is no point in appointing an Advocate Commissioner to inspect the said property. The revision petitioners started construction of the building only from 21.08.2014 and the plaintiff failed to pay the debt received from the Bank as per the agreement entered into between the plaintiff and the defendants, which resulted in initiation of SARFAESI proceedings in respect of the suit schedule property.

3. The revision petitioners state that the Trial Court, without application of mind, has simply allowed the application filed by the plaintiff for appointment of Advocate Commissioner without looking into the factual aspects and therefore, it is prayed that the order of the Trial Court needs re-consideration by this Court and has to be set aside at the threshold.

4. The learned counsel for the plaintiff has contended that on the basis of the request of the defendants 1 to 5, the plaintiff agreed to develop their property, as they did not have sufficient funds for development and were not even able to meet out the loans and debts. Therefore, a Joint Venture Agreement dated 24.04.2008 was entered into between the plaintiff and the defendants 1 to 4, as per the terms of which, the plaintiff is entitled to 50% share in the constructed area. It is further contended that the entire cost of the demolition of the old buildings in the suit property and construction of new buildings was borne by the plaintiff and to prove that the plaintiff had raised buildings in the property as per the agreement and to establish the present status of constructions, the plaintiff filed an application before the Trial Court for appointment of Advocate Commissioner, which was rightly allowed by the Court on the fond hope that no prejudice will be caused to other side on account of such appointment. Therefore, it is pleaded that the order of the Trial Court is sustainable and is valid in the eye of law, which does not require any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel appearing for respondents 1 and 3 to 6 and also perused the material documents available on record.

6. Admittedly, the application filed by the plaintiff for appointment of an Advocate Commissioner was at the stage of conducting the proceedings in the suit and the nature of dispute could only be resolved, only if the exact location / status of the suit property is ascertained, which cannot be done except by appointment of Advocate Commissioner. Moreover, noting down the physical features and other things would not amount to culling out



the evidence and no prejudice will be caused to other side and such appointment of Advocate Commissioner will be helpful for the Trial Court to sort out the issue in letter and spirit.

7. While dealing with the similar issue in the case of Shanmugathai vs. Kamalammal and another reported in 2017 (2) MWN (Civil) 315, I have myself passed an order, favouring appointment of Advocate Commissioner, by holding as under:

"11. Admittedly the present petition for appointment of an Advocate Commissioner was filed only at the stage of arguments, however the relief sought for in the suit is one for mandatory injunction and recovery of possession after declaration of the title. When the respective defendant deny the lie and location of disputed construction and specifically assert that the construction is within their property and there is no encroachment, the nature of dispute could be resolved only if the exact location of construction is brought to the knowledge of court, which cannot be done except by appointment of advocate Commissioner. Thus mere delay in filing the application after the case was posted for arguments is not a ground for dismissal of application and substantial justice requires that the appointment of commissioner is very much necessary to decide the lis.

12. At this juncture, it is useful to refer the Judgment of this Hon'ble Court in the case of Panjavarnam and others Vs- Visuvasam Jeyaseeli (CRP (NPD) (MD) No. 2192 of 2012) wherein it was held that the advocate commissioner if appointed would be able to visit the suit property with the help of a surveyor, measure the same and locate it and also note down as to what are all in existence in the suit property. Noting down the physical features would not amount to culling out the evidence. Further this court enunciated the importance of the maxim that A Picture is worth a thousand words. Further it was held by this Hon'ble Court in the said Judgment that it is mandate on the part of Lower court to appoint an advocate commissioner with a mission to visit the suit property with the help of surveyor and measure the same by referring to the survey map and documents of both sides and note down the physical features.

13. In yet another decision of this Court in the case of Vaithinattar and another v. Sakkubal Ammal reported in AIR 2004 Madras 419 it is held that in a suit for Declaration and Permanent Injunction, the dispute pertaining to portion of adjoining



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lands allegedly encroached by the defendants and the defendants denying that there was no such encroachment. This Hon'ble Court held that the best evidence in such case could be obtained only by the Appointment of advocate commissioner. Therefore in my considered view, no prejudice will be caused to the respondent herein by appointing the advocate commissioner to visit the suit property along with the surveyor and note down the physical features. In fact, the advocate commissioners report and plan would enable the court for the purpose of throwing more light or enlighten to arrive at a fair decision. Thus the appointment of commissioner is necessary and therefore the order of court below is liable to be set-aside."

8. Considering the overall circumstances of the case, this Court is of the view that to give speedy quietus to the issue, appointment of an Advocate Commissioner is essential and therefore, the order of the Trial Court, in my considered opinion, is justifiable and need not be reversed, as I do not find any illegality or perversity in the order impugned in this petition.

9. In the result,

(a) the Civil Revision Petition is dismissed, by confirming the order dated 03.02.2018 passed in I.A.No.386 of 2015 in O.S.No.802 of 2015 by the learned I Additional District Munsif, Tiruchirappalli;

(b) the learned I Additional District Munsif, Tiruchirappalli, is directed to direct the Advocate Commissioner to inspect the suit property and to file a report within a period of one month from the date of receipt of a copy of this order.

(c) on filing such report, both parties are directed to file their objections, if any, within a period of two weeks thereafter and on filing of objections within the time stipulated by this Court, the trial Court is directed to dispose of the suit in O.S.No.802 of 2015 within a period of three months from the date of filing objections, if any.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar



To:

1.The I Additional District Munsif,
Tiruchirappalli.

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

+1CC to Mr.R.Alagumani Advocate in SR.No.64637.

+1CC to Mr.S.Deenadhayalan Advocate in SR.No.64701.

AR

DS/SKN-RSK/SAR-3 :02.07.2018: 5P/6C

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