



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) No.780 of 2018

WEB COPY

Gunasekaran

... Petitioner

Vs.

1.Perumalsamy

2.Sakunthala@Elammal

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order made in I.A.No.625 of 2016 in O.S.No.138 of 2012 on the file of the District Munsif Court, Oddanchatram, dated 15.12.2017.

For Petitioner : Mr.D.Venkatesh

For Respondent : No Appearance

O R D E R

This civil revision petition has been filed to set aside the fair and decreetal order dated 15.12.2017 passed in I.A.No.625 of 2016 in O.S.No.138 of 2012 on the file of the ADistrict Munsif Court, Oddanchatram .

2.There is no representation for the respondents, even though notice is served on them and their names are printed in the cause list.

3. I have heard the learned counsel appearing for the petitioner and also perused the records carefully.

4. It is my absolute view that Advocate Commissioner can be appointed even in a bare injunction suit, as has been held by me in several cases. In one such case, reported in 2017 (2) MWN (Civil) 315 in the case of (Shanmugathai vs. Kamalammal and another), I have passed the following order:-

"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 Honble 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 Honble 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 lands allegedly encroached by the defendants and the defendants denying that there was no such encroachment. This Honble 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."

5. Perusal of records would show that the suit in I.A.No.625 of 2016 was filed by the petitioner / plaintiff for the relief of appointment of an Advocate Commissioner before the District Munsif Court, Oddanchatram and therefore, the learned District Munsif Court, Oddanchatram ought to have allowed the impugned application seeking appointment of an Advocate Commissioner.

6. Therefore, I am inclined to pass the following order:-

- this civil revision petition is allowed and the order passed by the learned District Munsif Court, Oddanchatram, in I.A.No.625 of 2016 in O.S.No.138 of 2012, dated 15.12.2017,



is set aside;

- the trial Court is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, by directing the Advocate Commissioner to inspect and file a report within a period of four weeks thereafter, by giving notice to both parties;
- on filing of such report, the trial Court shall dispose of the suit within a further period of four months;
- there shall be no order as to costs and consequently, the connected Miscellaneous Petition is closed.

Sd/

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar (CS-I)

To

The District Munsif,
Oddanchatram.

+1cc to Mr.D.Venkatesh, Advocate, SR.No. 76698

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