



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.872 of 2018
and C.M.P. (MD) No.3862 of 2018

1. A.T.K.Ramasamy
2. A.T.K.Seenivasan
3. A.T.K.Thathiya @ Ponraj
(Petitioners 2 and 3 are represented by their
Power Agent / 1st petitioner herein)

... Petitioners/Petitioners/Plaintiffs

-vs-

1. Ayyammal
2. Lakshmi
3. Jaishankar
4. Ravichandran
5. G.Saraswathi
6. G.Ravi
7. G.Ramesh
8. G.Ragavan
9. A.T.R.Gopalsamy
10.Muthuramalingam
11.Subbulakshmi
12.T.R.S.Ramasamy
13.T.R.S.Ayyappan
14.T.R.S.Laxmi Narayanan
15.Saradha
Rani @ Mariammal (Died)
16.Murugaveni
17.Kalpana
18.Geetha
19.Alamelu
20.Suresh
21.Karpagam
22.Nirmala
23.A.Murugesan @ A.Murugaperumalsamy
24.Minor M.Abarna
(P24 represented by natural guardian /
father / P23)

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the fair and decreetal order dated 20.03.2018 made in I.A.No.165 of 2017 in O.S.No.89 of 2015 on the file of the 1st Additional District Court (Full Additional Charge), Tuticorin, and allow this Civil Revision Petition.



For Petitioners : Mr.R.Vijayakumar
For Respondents : No Appearance

ORDER

The revision petitioners are the plaintiffs in O.S.No.89 of 2015 on the file of the 1st Additional District Court (Full Additional Charge), Tuticorin and in the suit, the revision petitioners/plaintiffs sought for declaration along with several other reliefs. During pendency of the suit, the petitioners/plaintiffs have filed an application in I.A.No.165 of 2017 for appointment of an Advocate Commissioner to inspect the suit property and note down its measurements with the assistance of a Surveyor and the said application was dismissed by the Trial Court, stating that there is no need to consider appointment of an Advocate Commissioner in this case. Challenging the said order, the petitioner is before this Court.

2. Heard the learned counsel for the petitioners and perused the material documents available on record. There is no representation on behalf of the respondents/defendants.

3. It is the case of the revision petitioners that they are in continuous and uninterrupted possession and enjoyment of the suit schedule properties and they were also granted patta for the properties in question. When the suit schedule properties were allotted to the plaintiffs by their predecessors by way of an oral partition, the defendants have no rights or title whatsoever on the suit schedule properties under any pretext. It is the further case of the revision petitioners that pending the suit, they filed an application before the Trial Court for appointment of Advocate Commissioner to ascertain the exact physical features of the suit properties. But the Trial Court, instead of exercising its discretion vested under Order 26 Rule 9 CPC, dismissed the said application.

4. The revision petitioners state that it is mandate on the part of the Trial Court to appoint an Advocate Commissioner with a mission to visit the suit property with the help of a Surveyor and measure the same by referring to the Survey Map and documents of both sides and note down the physical features. In support of his submission, he has relied upon the judgment of this Court in the case of Shanmugathai vs. Kamalammal and another reported in 2017 (2) MWN (Civil) 315, wherein this Court was pleased to appoint an Advocate Commissioner for the purpose of inspection of the suit property.

5. In the said judgment, this Court held as follows:

"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

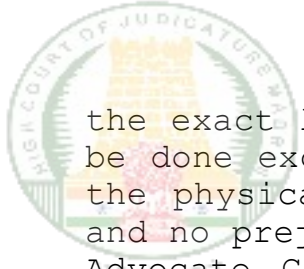


possession after declaration of the title. When the respective defendant deny the lie and location of disputed construction and specifically assert that the construction is within their property and there is no encroachment, the nature of dispute could be resolved only if the exact location of construction 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."

6. Admittedly, the application for appointment of an Advocate Commissioner was filed only at the stage of proceedings in the suit and the nature of dispute could only be resolved, only if



the exact location of the suit property is identified, which cannot be done except by appointment of Advocate Commissioner. Noting down the physical features would not amount to culling out the evidence and no prejudice will be caused to other side in such appointment of Advocate Commissioner. The suit is of the year 2015 and already, three years have elapsed and therefore, this Court is of the view that to give speedy quietus to the issue, appointment of an Advocate Commissioner is essential.

7. In the result,

a) this civil revision petition is allowed and the order dated 20.03.2018 made in I.A.No.165 of 2017 in O.S.No.89 of 2015 by the learned 1st Additional District Judge (Full Additional Charge), Tuticorin, is set aside;

b) the learned 1st Additional District Judge (Full Additional Charge), Tuticorin is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order to note down the physical features of the suit property along with Surveyor, with a direction to the Advocate Commissioner to file a report within a period of one month from the date of such appointment, after issuance of notice to both parties and inspection of the properties;

c) on filing the report by the Advocate Commissioner, the learned 1st Additional District Judge (Full Additional Charge), Tuticorin is directed to dispose of the suit within a period of four months thereafter.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar(CS-II)

To

1. The 1st Additional District Judge,
(Full Additional Charge), Tuticorin.
 2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)
- +1cc to Mr.R.Vijayakumar, Advocate, SR.No.67922.

C.R.P. (PD) (MD) No.872 of 2018

12.06.2018

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