



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2018

CORAM

WEB COPY

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

C.R.P. (MD) (PD) No.1617 of 2015

1.C.Nainar Kulasekaran
2.S.V.P.S.Senthilkuma
3.C.Kulasekaran
4.S.V.P.S.Pandaram

: Petitioners/Defendants

vs

T.Kalidoss

: Respondent/Plaintiff

Revision filed under Article 227 of Constitution of India against the order dated 08.07.2015 passed in I.A.No.86 of 2015 in O.S.No.71 of 2014 on the file of the District Munsif Court, Srivaikuntam.

For Petitioners : Mr.T.Arul
For Respondent : Mr.R.Manimaran

ORDER

Being aggrieved by the order dated 08.07.2015 in I.A.No.86 of 2015 in O.S.No.71 of 2014 on the file of the learned District Munsif Court, Srivaikuntam appointing an advocate commissioner to inspect the suit property, the defendants have preferred this Civil Revision Petition.

2. The respondent/plaintiff has filed the suit for permanent injunction against the defendant. Pending suit, the plaintiff has filed I.A.No.86 of 2015 to appoint an advocate commissioner to note down the physical features of the suit property along with the Surveyor and file a report alleging that in the suit schedule property, Jamindar Thiruvazhuthi Vaikunta Nadar Memorial Trust had constructed buildings where Panchayat Board office, Public Distribution shop, post office and election booth were functioning. But the defendants are alleging that they are maintaining the buildings. It is alleged that the defendants had put up culverts and statue by putting the name Founder NMP Pandara Nadar in the suit property. Therefore, in order to show the physical features of the



suit property to the Court, it is necessary to appoint an advocate commissioner to inspect the suit property along with the Surveyor.

3. Denying the averments in the affidavit filed in support of the petition, the second defendant filed counter stating that there is no quarrel over the physical features of the suit property. It is stated that the suit itself is not maintainable on the ground that the plaintiff has not sought for any declaration and he had only sought permanent injunction against the defendants, who were office bearers of Jamindar Memorial Trust. The plaintiff has filed petition to appoint an advocate commissioner belatedly after examining himself as P.W.1 and there is no necessity to appoint the advocate commissioner.

4. Upon consideration of the rival submissions, the trial Court appointed the advocate commissioner to note down the physical features of the suit property and directed to file the report. Aggrieved by the same, the defendants have filed the Civil Revision Petition.

5. I heard Mr.T.Arul, learned counsel for the petitioners and Mr.R.Manimaran, learned counsel for the respondent and also perused the materials available on record.

6. The learned counsel for the petitioners submitted that the trial Court had completely overlooked the very scope and ambit of Order 26, Rule 9 of C.P.C. as well as the nature of controversy to be decided in the suit. He argued that the report of the advocate commissioner will not help the Court to decide the suit. He submitted that the trial Court had failed to advert a crucial issue that the plaintiff has already been partly examined and only when the matter was posted for cross examination, without subjecting himself to be cross examined, he had filed the petition. The reason adduced by the trial Court was unsound and therefore the order of the trial Court is liable to be set aside.

7. Per contra, the learned counsel for the respondent submitted that though the plaintiff has sought appointment of advocate commissioner along with Surveyor to inspect the suit property, the trial Court had appointed only the advocate commissioner and if the advocate commissioner inspected the suit property, no prejudice would be caused to the defendants.

8. I have carefully considered the submissions made by the learned counsel for the petitioners and the learned counsel for the respondent.

9. Though the plaintiff has sought for appointment of advocate commissioner along with Surveyor to inspect the suit property, during the course of arguments before the trial Court, the counsel for the plaintiff stated that there is no need for any Surveyor's assistance. Recording the submission, the trial Court



appointed only the advocate commissioner by observing as under:

"Though the respondents side counsel raised strong objections for allowing the present petition, this court is inclined to allow the present petition by appointing Miss.M.Selvarani as the Advocate Commissioner to note down only the physical features of the petition schedule property on the following stringent condition:

- 1. The petitioner is directed to pay the remuneration of Rs.2500/- for the Advocate Commissioner which is to be deposited in the court account within a period of one week.*
- 2. The petitioner should take effective steps in co-operating with the Advocate Commissioner and the Advocate Commissioner is to file her report within a period of one month from today.*

The Advocate Commissioner is directed to visit the petition schedule property after giving notice to both the parties and is required to file her report and plan regarding the physical features of the petition schedule property within a period of one month from today.

In default of any of the above said conditions, the present petition is to stand dismissed automatically."

10. The learned counsel for the petitioners submitted that the report of the advocate commissioner would not help the Court in deciding the real controversy between the parties and therefore, the order of the trial Court is liable to be set aside. The said submission of the learned counsel for the petitioners cannot be countenanced.

11. The learned counsel for the petitioners would also submit that the trial has begun and the plaintiff examined himself as P.W.1 in chief and without subjecting himself to be cross-examined, he has filed the petition to appoint advocate commissioner.

12. There is no hard and fast rule that appointment of advocate commissioner cannot be made when chief examination of P.W.1 was over. The plaintiff has sought appointment of advocate commissioner only to note down the physical features of the suit property. No prejudice would be caused to the defendants, if the advocate commissioner visited the suit property and filed his report.

13. The object of appointment of an Advocate Commissioner is not to collect evidence but for elucidating matters, which are local in character and which can be done only by local investigation, at the place concerned. A Commissioner cannot decide the dispute between the parties to the suit. However, his report would help the Court in deciding the dispute. The appointment of Advocate Commissioner can be made, especially, when no prejudice would be caused to the opposite party, by such appointment.



14. It is also not the case of the defendants that in order to collect the evidence, appointment of Advocate Commissioner was sought by the plaintiff. Therefore, in the interest of justice and in order to show the physical features of the suit property, the trial Court had appointed the Advocate Commissioner. No valid ground has been made out to interfere with the order of the trial Court and the Civil Revision Petition is liable to be dismissed.

15. By an order dated 04.08.2015, this Court directed the Advocate Commissioner to go ahead with her work. However, filing of the report was stayed.

16. In the result, the Civil Revision Petition is dismissed. The Advocate Commissioner is directed to file her report immediately. The defendants are granted liberty to file their objections, if any, to the report of the Advocate Commissioner. Upon filing the report and objections, if any, the trial Court is directed to dispose of the suit at an early date. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-3)

To

The District Munsif,
Srivaikuntam.

+ 1 CC TO Mr.T.ARUL, ADVOCATE IN SR No. 71505

VSV

TE/PN/SAR-3 : 24/07/2018 : 4P/3C

order made in
C.R.P. (MD) (PD) No.1617 of 2015
05.07.2018