



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.188 of 2015
and M.P. (MD) No.1 of 2015

S.Pushpam

... Petitioner/
Petitioner/Plaintiff

-vs-

1. Suseela
2. Raja @ Rajkumar

...Respondents/Respondents/
Defendants

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed in I.A.No.15 of 2014 in O.S.No.199 of 2012 on the file of District Munsif-cum-Judicial Magistrate Court, Boothapandi dated 23.07.2014.

For Petitioner : Mr.M.P.Senthil
For Respondents : No Appearance

O R D E R

The Revision Petitioner is the plaintiff in the suit in O.S.No.199 of 2012 on the file of District Munsif-cum-Judicial Magistrate Court, Boothapandi and the suit was filed by the plaintiff for injunction, etc. During the pendency of the suit, the plaintiff filed an application in I.A.No.15 of 2014 for appointment of an Advocate Commissioner to inspect the suit property, which was dismissed by the Trial Court on 23.07.2014 on the ground that in absence of exact measurement furnished by the petitioner, there is no need to appoint an Advocate Commissioner for inspection of the property in dispute. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioner / plaintiff that she had constructed a house leaving sufficient space on four sides of her house for enjoyment of the petition 'A' schedule property and the 1st respondent has a property, described as petition 'B' schedule property, on the south west of plaintiff's property. The 1st respondent has no right over the petition 'A' schedule property. It is the further case of the petitioner that though subdivision was made between petition 'A' schedule and 'B' schedule



properties, no demarcation was made to separate both the properties and therefore, the suit was filed for demarcation as well as permanent injunction. The plaintiff, in order to reveal the exact position, filed an application before the Trial Court for appointment of Advocate Commissioner, which was dismissed by the Court for the reason stated supra.

3. The revision petitioner states that the Trial Court, without application of mind, has simply dismissed the application filed by her 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. Heard the learned counsel for the petitioner and also perused the material documents available on record. There is no representation on behalf of the respondents.

5. 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.

6. 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 a 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 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 commissioner's 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."

7. Considering the overall circumstances of the case, this Court is of the view that to give speedy quietus to the dispute, the appointment of an Advocate Commissioner is essential and therefore, the order of the Trial Court, in my considered opinion,



is liable to be set aside, as the same is un-sustainable.

8. In the result,

(a) the Civil Revision Petition is allowed, by setting aside the order dated 23.07.2014 passed in I.A.No.15 of 2014 in O.S.No.199 of 2012 on the file of District Munsif-cum-Judicial Magistrate Court, Boothapandi;

(b) the learned District Munsif-cum-Judicial Magistrate, Boothapandi is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, with direction to the Advocate Commissioner to inspect the suit property and to file a report within a period of one month thereafter;

(c) on filing such report, both parties are directed to file their objections, if required, within a period of two weeks from the date of filing report and on filing of objections within the time stipulated by this Court and upon consideration of the same, the Trial Court is directed to dispose of the suit within a period of three months from the date of filing objections, if any, by conducting the trial on day-to-day basis without giving any unnecessary adjournments to either parties and both the parties are directed to give their fullest cooperation for early disposal of the suit within the time stipulated by this Court as above.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1.The District Munsif-cum-Judicial Magistrate,
Boothapandi.

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



+ 1 CC TO MR.M.P.SENTHIL , ADVOCATE IN SR NO.73351

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BU/PM/SAR-IV : 03.10.2018 : 5P/5C

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