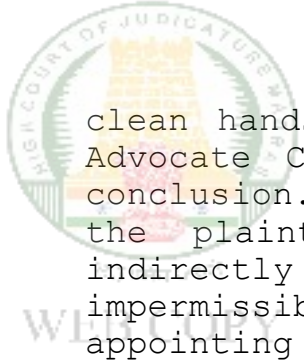




clean hands and there is no whisper as to how the appointment of Advocate Commissioner will help the Court to come to a logical conclusion. It is the further case of the revision petitioner that the plaintiff/respondent has been trying to collect evidence indirectly by way of appointment of Advocate Commissioner, which is impermissible under law and therefore, there is no point in appointing an Advocate Commissioner to inspect the said property. It is further argued that appointment of an Advocate Commissioner is highly unwarranted, which was filed only to unearth the possession of the parties. Therefore, it is contended that the order of the Trial Court is valid in the eye of law, which does not require any interference by this Court.

4. Heard the learned counsel on either side and also perused the material documents available on record.

5. Admittedly, the application filed by the defendant 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 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.

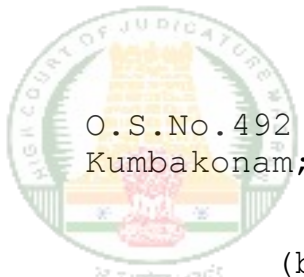
13. In yet another decision of this Court in the case of Vaithinattar and another v. Sakkubal Ammal reported in AIR 2004 Madras 419 it is held that in a suit for Declaration and Permanent Injunction, the dispute pertaining to portion of adjoining lands allegedly encroached by the defendants and the defendants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

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

8. In the result,

<https://hcservices.ecourts.gov.in/hcservices/>

(a) the Civil Revision Petition is allowed, by setting aside the order dated 23.09.2014 made in I.A.No.253 of 2014 in



O.S.No.492 of 2011, by the learned I Additional District Munsif, Kumbakonam;

(b) the learned I Additional District Munsif, Kumbakonam 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 by giving notice to both parties 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 thereafter, 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-I)

/True Copy/

Sub Assistant Registrar(CS-II)

ar

To:

- 1.The I Additional District Munsif,
Kumbakonam.
- 2.The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Guhan, Advocate in SR No.76531

+2cc to Mr.Gomathi Sankar, Advocate in SR No.76467,77387

C.R.P. (PD) (MD) No.2388 of 2015



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