



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2018

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THE HONOURABLE MR.JUSTICE M.V.MURALIDARANC.R.P. (PD) (MD) No. 941 of 2018
and C.M.P. (MD) No.4152 of 2018

1. Govindan
2. Shanmugasundaram
3. Murugesan
4. Nadarajan

... Petitioners/Petitioners/Defendants

-vs-

Rengaraj

... Respondent/Respondent/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 03.01.2018 in I.A.No.421 of 2017 in O.S.No.119 of 2016 passed by the learned District Munsif-cum-Judicial Magistrate, Thirumayam.

For Petitioner	:	Mr.A.V.Rajasekaran
For Respondent	:	Mr.G.Mathavan

ORDER

The Revision Petitioners are the defendants in the suit in O.S.No.119 of 2016 on the file of the learned District Munsif-cum-Judicial Magistrate, Thirumayam and the suit was filed by the plaintiff for bare injunction, etc. During the pendency of the suit, the defendants filed an application in I.A.No.421 of 2017 for appointment of an Advocate Commissioner to inspect the suit property, which was dismissed by the Trial Court on 03.01.2018, on the ground that the relief was sought for collection of evidence. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioners / Defendants that they had filed the application for appointment of Advocate Commissioner to ascertain the actual residence of the plaintiff, as S.F.No.287 of 2015, which is the issue involved in the suit is a vacant site. It is further case of the petitioners that in order to reveal the exact position, they filed the application, which was dismissed by the Trial Court without analyzing the factual



aspects and the appointment of Advocate Commissioner is not only helpful to the Court to arrive at a logical conclusion, but also beneficial to the plaintiff to defend his case effectively. Therefore, it is pleaded that the order of the Trial Court needs intervention by this Court and is liable to be set aside.

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3. Per contra, learned counsel for the respondent/plaintiff has contended that the revision petitioners have 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. No documents have been produced on the side of the petitioners to show that S.No.45 absolutely belongs to them and as such, the appointment cannot be made on the basis of assumption and presumption. Further contending that the order of the Trial Court is perfectly valid and does not warrant any interference by this Court, it is prayed that the petition is liable to be dismissed.

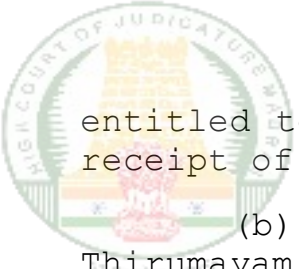
4. Heard the learned counsel on either side and also perused the material documents available on record.

5. A bare reading of the plaint would show that admittedly, the plaintiff had filed the suit in O.S.No.119 of 2016 before the concerned Trial Court in respect of S.No.287/15. It is the claim of the petitioners that the plaintiff has been residing in S.No.45 and therefore, the Advocate Commissioner should inspect S.No.45 instead of S.No.287/15. There is no force in the contention raised by the petitioners, because when the plaintiff had filed the suit in respect of S.No.287 of 2015, there is no need to order inspection of some other properties by the Advocate Commissioner. Though this Court had passed an order in the case of **Shanmugathai vs. Kamalammal and another** reported in **2017 (2) MWN (Civil) 315**, favouring appointment of Advocate Commissioner, the present case does not come under the purview of the said case.

6. Considering the overall facts and circumstances of the case and finding no merits in this case, this Court is of the view that the order of the Trial Court is sustainable and has to be confirmed, as I do not find any illegality or perversity in the order impugned in this petition

7. In the result,

(a) the Civil Revision Petition is dismissed, by confirming the order dated 03.01.2018 passed in I.A.No.421 of 2017 in O.S.No.119 of 2016 by the learned District Munsif-cum-Judicial Magistrate, Thirumayam, with liberty to the petitioners to file an application for appointment of an Advocate Commissioner to inspect the property in respect of S.No.287/15 alone, within a period of two weeks from the date of receipt of a copy of this order and if any such application be filed, the plaintiff/respondent herein is



entitled to make his objections within two weeks from the date of receipt of notice in the application;

(b) the learned District Munsif-cum-Judicial Magistrate, Thirumayam, is directed to pass orders on the application, if any filed within two weeks thereafter and dispose of the suit within one month from the date of filing of report by the Advocate Commissioner, after considering the objections to be filed on the report by the parties, if any.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The District Munsif cum Judicial Magistrate,
Thirumayam.

+ 1 CC TO Mr.A.V.RAJASEKARAN, ADVOCATE IN SR No. 70657
+ 1 CC TO Mr.G.MATHAVAN, ADVOCATE IN SR No. 70735

KSA
TE/RSK/SAR-3 : 11/08/2018 : 3P/4C

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