



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V. MURALIDARAN

C.R.P. (MD) No.2481 of 2015

and

M.P (MD) .No.1 of 2015

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- 1.C.Malai Pillai
- 2.C.Muthammal
- 3.C.Manosakthi
- 4.Sutha
- 5.C.Kartheeban
- 6.C.Kanagam
- 7.E.Senthil
- 8.Krishnan
- 9.Leela
- 10.Paul Rethinam
- 11.Sutha

: Petitioners/Petitioners/Plaintiffs

-Vs-

1. The State of Tamil Nadu
rep. by District Collector,
Kanyakumari District at Nagercoil,
Nagercoil Village,
Agasteeswaram Taluk,
Kanyakumari District.

- 2.The Tahsildar,
Thovalai Taluk,
Boothapandi,
Boothapandi Village,
Thovalai Taluk,
Kanyakumari District.

: Respondents/ Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 07.04.2015 made in I.A.No. 666 of 2014 in O.S.No.215 of 2013 on the file of the Principal Sub Court, Nagercoil

For Petitioners
For respondents

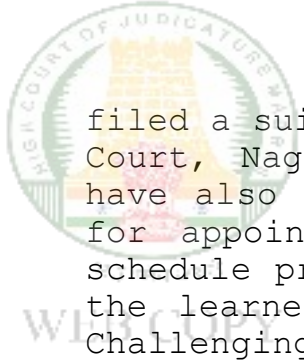
: Mr.A. Arumugam
: Mrs. V.P.M. Vaishnavi
Government Advocate.

O R D E R

This Civil Revision Petition is filed against the fair and decreetal order dated, 07.04.2015 made in I.A.No. 666 of 2014 in O.S.No.215 of 2013, on the file of the Principal Sub Court, Nagercoil.

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

2. The revision petitioners, who are the plaintiffs have



filed a suit in O.S.No.215 of 2013, on the file of the Principal Sub Court, Nagercoil, for permanent injunction. Pending suit, they have also filed an Interlocutory Application in I.A.No.666 of 2014 for appointment of an Advocate Commissioner to inspect the suit schedule property and submit a report and the same was dismissed by the learned Principal Subordinate Judge, Nagercoil on 07.04.2015. Challenging the said order of dismissal, the revision petitioners / plaintiffs have filed the present Civil Revision Petition.

3. The learned Government Advocate appearing for the respondents strongly objected for appointing the Advocate Commissioner stating that the Pattas were already issued to the petitioners and hence, the suit itself is not maintainable. In such circumstances, there is no necessity to inspect the suit property.

4. I have heard the learned counsel appearing on either side and perused the materials available on record.

5. This Court in several cases states that the appointment of an Advocate Commissioner is necessary in all cases, even though in the suit for bare injunction. The learned Principal Subordinate Judge, Nagercoil, has dismissed the application only on the ground that the suit for bare injunction and that the appointment of an Advocate Commissioner is not necessary. It is my absolute view that Advocate Commissioner can be appointed even in a bare injunction suit, as has been held by me in several cases. In one such case, reported in **2017 (2) MWN (Civil) 315** in the case of (**Shanmugathai vs. Kamalammal and another**), I have passed the following order:-

"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 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. Once the pattas were issued, the plaintiffs have to prove their case by way of appointing an Advocate Commissioner, this was considered by me. If the Advocate Commissioner is appointed and filed his report, the report will be useful to the Court to decide the suit as early as possible. Hence, this Court is inclined to allow this Civil Revision Petition.

7. In the result,

(i) This Civil Revision Petition is allowed by setting aside order, dated 07.04.2015 made in I.A.No. 666 of 2014 in O.S.No.215 of 2013, on the file of the Principal Sub Court, Nagercoil

(ii) The learned Principal Subordinate Judge 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 a direction to the Advocate Commissioner to submit his report within a period four weeks thereafter.

(iii) The Trial Court is directed to dispose of the suit in O.S.No.215 of 2013 within a period of three months thereafter.

(iv) No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-



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4

Assistant Registrar(CS-III)

Sub Assistant Registrar(SAR-III)

To

The Principal Subordinate Judge, Nagercoil.

+1cc to Mr.R.Murugan, Advocate Sr.No.69259

+1cc to Spl.Government Pleader Sr.No.69395

TRP

VB/RP/SAR3/24.07.2018/4P/4C

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