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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2510 of 2015
and M.P. (MD) No.1 of 2015

Periyasamy

... Revision Petitioner/Petitioner/
Plaintiff

-Vs-

1. Raja
2. Ramar

... Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records relating to the impugned fair and decreetal order dated 10.10.2015 made in I.A.No.558 of 2015 in O.S.No.81 of 2010 on the file of District Munsif Court, Muthukulathur, set aside the same and allow this Civil Revision Petition.

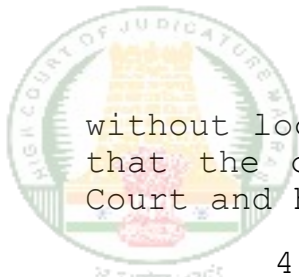
For Petitioner : Mr.S.Srinivasa Raghavan
For R2 : Mr.G.Marimuthu
For R1 : No Appearance

ORDER

The Revision Petitioner is the plaintiff in the suit in O.S.No.81 of 2010 on the file of District Munsif Court, Muthukulathur and the suit was filed by the plaintiff for declaration, bare injunction, etc. During the pendency of the suit, the plaintiff filed an application in I.A.No.558 of 2015 for appointment of an Advocate Commissioner to inspect the suit property, which was dismissed by the Trial Court on 10.10.2015. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioner / plaintiff that he had executed a sale deed in favour of the 1st defendant in respect of 8 cents of land, leaving a portion of the land situated on the northern and southern sides of the plaint schedule property and even it was stated in the written statement of the 2nd defendant that the exact location of the suit schedule property has to be ascertained through an Advocate Commissioner so as to come to a logical conclusion. It is the further case of the revision petitioner that he, 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 on the ground that there is no need to measure the properties of both the plaintiff and the 2nd defendant.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The revision petitioner states that the Trial Court, without application of mind, has simply dismissed the application filed by the plaintiff 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. The learned counsel for the defendants / respondents herein has contended that much prejudice will be caused to them in the event of appointment of an Advocate Commissioner, as the plaintiff 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 contended that no explanation is forthcoming for the delay in approaching the Court for such appointment and when the 2nd defendant himself insisted upon the need for appointment of an Advocate Commissioner in the written statement some three years before, the act of the plaintiff in seeking such a relief belatedly is nothing, but an abuse of process of law and the same has to be deprecated. Therefore, it is pleaded that the order of the Trial Court is sustainable and is valid in the eye of law, which does not require any interference by this Court.

5. Heard the learned counsel for the petitioner and the learned counsel for R2 and perused the material documents available on record. There is no representation on behalf of the 1st respondent.

6. 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.

7. 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



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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."



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 unsustainable.

9. In the result,

WEB COPY (a) the Civil Revision Petition is allowed, by setting aside the order dated 10.10.2015 made in I.A.No.558 of 2015 in O.S.No.81 of 2010 by the learned District Munsif, Muthukulathur;

(b) the learned District Munsif, Muthukulathur, 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 any, 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 four months from the date of filing objections, if any.

No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-IV)

To:

The District Munsif,
Muthukulathur.

Copy To:

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

+1CC to M/s.G.M.LAW OFFICE, Advocate, SR.No. 69813

+1CC to Mr.S.SRINIVASA RAGHAVAN, Advocate, SR.No.70071

C.R.P.(PD) (MD) No.2510 of 2015

26.06.2018

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