



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.02.2018

DELIEVRED ON : 28.03.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU

C.R.P (MD) No.1304 of 2017 (PD)

and

C.M.P. (MD) .No.6345 of 2017

Pr.Thangaraj David

.. Petitioner /

Respondent / 1st defendant

Vs.

1.Glory

... 1st respondent /

Petitioner / Plaintiff

2.Sumathi

3.Veevekanathan

... Respondents 2 & 3/

Respondents/Defendants 2 & 3

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decreetal order, dated 17.04.2017, passed in I.A.No.598 of 2016 in O.S.No.89 of 2013, by the learned District Munsif, Sathur.

For Petitioner	:	Mr.N.S.Ponniah
For 1 st respondent	:	Mr.S.Raja
For R2 & R3	:	No Appearance

ORDER

This civil revision petition has been filed by the revision petitioner / first defendant challenging the fair and decreetal order, dated 17.04.2017 in I.A.No.598 of 2016 in O.S.No.89 of 2013, by the learned District Munsif, Sathur.

2.The first respondent / plaintiff has filed the suit for permanent injunction restraining the revision petitioner / 1st defendant and the respondents 2 & 3 / defendants 2 & 3 from interfering with his peaceful possession and enjoyment of the suit property. After completion of evidence, when the matter was posted for argument, the first respondent / plaintiff has filed I.A.No.598 of 2016 for appointment of an Advocate Commissioner stating that since the defendants specifically denied that the suit property is a vacant land and there was no building in existence in the suit property and according to the first respondent / plaintiff, there was a building, which was subsequently demolished by the defendants, an Advocate Commissioner may be appointed to find out whether any building was in existence in the suit property. The Court below has allowed



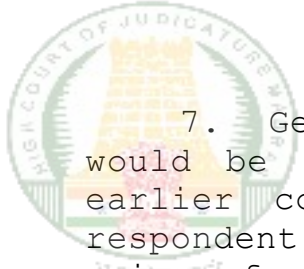
the said interlocutory application and appointed an Advocate Commissioner, against which the present revision petition has been filed by the revision petitioner / 1st defendant.

3. The learned counsel for the revision petitioner / 1st defendant would submit that the suit property belongs to the religious institution, which is being managed by the revision petitioner / 1st defendant and the first respondent / plaintiff claimed the suit property, based on the settlement deed executed by her husband, who had no legal right over the suit property and that the document number and survey number have been wrongly mentioned in the plaint. He would further submit that in order to prove and collect evidence about her possession, the first respondent / plaintiff had filed the said interlocutory application for appointment of an Advocate Commissioner and the same was erroneously allowed by the Court below and hence, the order impugned in this petition is liable to be set aside.

4. The learned counsel appearing for the first respondent / plaintiff would submit that a building was in existence in the suit property, in which the first respondent / plaintiff was running a child care centre and the revision petitioner / 1st defendant has demolished the said building. Since he has specifically stated that the suit property is only a vacant site and there was no building in existence, the first respondent / plaintiff has filed the said interlocutory application seeking to appoint an Advocate Commissioner to inspect the suit property and to find out whether any building was in existence in the land in question and the Court below has rightly allowed the said interlocutory application and the same need not be interfered with. Thus, he prayed for dismissal of the revision petition.

5. Heard the learned counsel appearing for the revision petitioner / 1st defendant and the learned counsel appearing for the first respondent / plaintiff and perused the records carefully.

6. Admittedly, the suit was filed by the 1st respondent / plaintiff for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property. According to the 1st respondent / plaintiff, the defendants demolished the building in the suit property where a child care centre was functioning. According to the revision petitioner / 1st defendant, it is a vacant land and they did not demolish the building. Whether a building was in existence or not can be proved by way of oral and documentary evidence. But, the 1st respondent / plaintiff has filed an application for appointment of Commissioner to find out whether any building was in existence in



7. Generally, when there is no wall or pillar in a land, it would be called as a vacant land, even if foundation for the earlier construction is available. In this case, the first respondent / plaintiff wants to prove his possession under the guise of collecting evidence about the existence of the building through the appointment of Advocate Commissioner. It is settled law that an Advocate Commissioner cannot be appointed to collect material evidence to prove the case, that too to prove the fact of possession. Further, in order to drag on the proceeding, the 1st respondent / plaintiff has filed the interim application for appointment of Advocate Commissioner. The Court below, without considering the above aspects, has erroneously allowed the said application. Hence, the order impugned in this petition is liable to be set aside and accordingly set aside.

8. In the result, this civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(W)

/True copy/

Sub Assistant Registrar

To

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

+1cc to Mr.N.S.Ponniah, Advocate Sr.No.58671

+1cc to Mr.S.Raja, Advocate Sr.No.59201

GCG

VB/JC/SAR3/25.04.2018/3P/6C

order made in
C.R.P (MD) No.1304 of 2017 (PD)
28.03.2018