



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.2150 of 2017
and C.M.P. (MD) No.10607 of 2017

A.Thersa Juliet

... Petitioner/Petitioner/Defendant

-vs-

Religious Trust of Tamil Nadu,
Carmelite Province O.C.D.,
Rep. by its Provincial
Sirumalar Nagar, Manikandam,
Srirangam Taluk,
Trichy District.

... Respondent/Respondent/Plaintiff

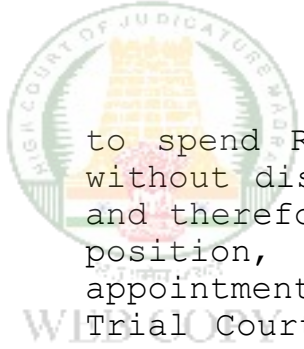
Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to allow the Civil Revision Petition and call for the records in I.A.No.287 of 2017 in O.S.No.346 of 2016 on the file of the Additional Subordinate Judge Court, Thanjavur dated 21.09.2017, set aside the fair and decreetal order.

For Petitioner : Mr.T.S.R.Venkataramana
For Respondent : No Appearance

O R D E R

The Revision Petitioner is the defendant in the suit in O.S.No.346 of 2016 on the file of the Additional Subordinate Judge Court, Thanjavur and the suit was filed by the plaintiff for recovery of possession, etc. During the pendency of the suit, the defendant filed an application in I.A.No.287 of 2017 for appointment of an Advocate Commissioner to inspect the suit property, which was dismissed by the learned Trial Court on 21.09.2017. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioner / Defendant that she is a tenant under the plaintiff and has been doing a business of home appliance in the name and style of Abi and Co. on payment of monthly rent regularly without any default. It is the further case of the petitioner that though the respondent Trust had constructed a new shop, no amenities and accessories, such as flooring and painting for running his business and therefore, the petitioner had



to spend Rs.20,00,000/- towards the same. It is also stated that without disclosing the above fact, the plaintiff had filed the suit and therefore, the revision petitioner, in order to reveal the exact position, filed an application before the Trial Court for appointment of Advocate Commissioner, which was dismissed by the Trial Court stating that the application has no merits. Contending that the order of the Trial Court is un-sustainable and is liable to be set aside, it is prayed that this petition has got to be allowed.

3. Heard the learned counsel for the petitioner and also perused the material documents available on record. There is no representation on behalf of the respondent/plaintiff.

4. 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.

5. 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 a 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."

6. 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.

7. In the result,



(a) the Civil Revision Petition is allowed, by setting aside the order dated 21.09.2017 passed in I.A.No.287 of 2017 in O.S.No.346 of 2016 by the learned Additional Sub-ordinate Judge, Thanjavur;

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(b) the learned Additional Sub-ordinate Judge, Thanjavur 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 four 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 (RTI)

// True Copy //

Sub Assistant Registrar(CS-III)

To:

1. The Additional Sub-ordinate Judge,
Thanjavur.
2. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1 CC To MR.T.S.R.VENKAT RAMANA, Advocate SR. NO. 73490

C.R.P. (PD) (MD) No.2150 of 2017

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