



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.01.2018

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P. (PD) (MD) No.2647 of 2017

and

C.M.P. (MD) No.12175 of 2017

1.Rajaram
2.Govindaraj
3.Kishnamurthy
4.Venkatesan

... Revision Petitioners /
Defendants 1 to 4 /
Plaintiffs

vs.

1.Krishnamurthy
2.Aandal Ammal
3.Muruganandam
4.Karthik

... Respondents 1 to 4 /
Plaintiffs / Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India against the order passed in I.A.No.702 of 2017 in O.S.No.939 of 2016 on the file of the Principal District Munsif Court, Trichy dated 27.10.2017.

For Petitioners : Mr.J.K.Jayaselan

For Respondents : Mr.K.Prabhakar

ORDER

This Civil Revision Petition has been filed to set aside the order passed by the learned Principal District Munsif, Trichy in I.A.No.702 of 2017 in O.S.No.939 of 2016 dated 27.10.2017.

2. The facts of the case are that the petitioners herein are the plaintiffs in the suit in O.S.No.939 of 2016, filed for permanent injunction. Along with the said suit, an interlocutory application in I.A.No.510 of 2016 was filed, seeking interim injunction, which was ordered as prayed for. Thereafter, the respondents herein/defendants have filed an interlocutory application in I.A.No.702 of 2017, seeking to appoint an Advocate Commissioner to inspect the suit property and the property detailed in the counter claim with the help of a surveyor. The said interlocutory application was also allowed and an Advocate Commissioner was appointed to measure and demarcate the properties.



Aggrieved thereby, the present civil revision petition came to be filed.

3. The learned Counsel for the petitioners would submit that the documents filed by the respondents/defendants in the suit are so specific with clear boundaries and that document, itself, would show the details with regard to the place where the respondents/defendants are in possession and enjoyment. Such being so, the present Commissioner application is not warranted and only to drag on the suit proceedings, the respondents herein have filed the said application.

4. He would further submit that it is a settled law that Advocate Commissioners cannot be appointed for collecting evidence and for making roving enquiry. He would strongly contest that the lower Court has erred in allowing the interlocutory application. Therefore, he prays for setting aside the impugned order thereby, to allow the present petition.

5. The learned Counsel appearing for the respondents, on the other hand, would submit that the petitioners herein/plaintiffs, taking advantage of the interim injunction, are encroaching into a portion of their property in T.S.No.209. He would further submit that the petitioners herein have earlier filed an interlocutory application in I.A.No.511 of 2016 to demarcate the property and the respondents have orally represented that they have no objection for inspection by a Commissioner. But, all of a sudden, the petitioners herein have withdrew the said Commission application as not pressed.

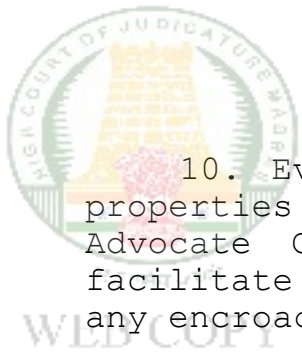
6. He would further submit that it is just and necessary to appoint an Advocate Commissioner to inspect the property in question and demarcate the same, therefore, they had filed the interlocutory application in I.A.No.702 of 2017 and the lower Court has rightly allowed the same. Therefore, he prays to dismiss the present revision petition.

7. In support of his contention, the learned Counsel for the respondents relied upon the judgment of this Court, reported in 2010 0 Supreme (MP) 400, in the case of *Prembai and others Vs. Ghanshyam and others*, wherein it is held as follows,

"Suit for injunction - Open space between house and plot - Dispute as to encroachment - Spot inspection report should be called for by appointing Commissioner - Without such report suit cannot be decreed."

8. Heard the learned Counsel appearing on both sides and perused the documents placed on record.

9. A perusal of the judgment would clearly show that this Court has categorically held that the appointment of Advocate Commissioner is necessary in demarcation of properties. In the case on hand, there is a dispute as to who has encroached the property and therefore, demarcation is very much necessary in this matter.



10. Even according to the petitioners, the boundaries of the properties are very specific and therefore, the appointment of Advocate Commissioner will never prejudice them. It will only facilitate the Court to come to a conclusion, as to whether there is any encroachment in the properties in dispute.

11. It is pertinent to note here that the petitioners herein, themselves, have filed an application for appointment of Advocate Commissioner and for the reasons best known to them, they had, later on, withdrawn the same.

12. I am of the considered opinion that the appointment of Advocate Commissioner will only facilitate the Court to arrive at a fair finding and therefore, the impugned order passed by the trial Judge does not warrant any interference.

13. In result, this civil revision petition is dismissed, as devoid of merits. However, keeping in mind the apprehension of the petitioners that the respondents are dragging on the proceedings, this Court is inclined to direct the learned Principal District Munsif, Trichy for early disposal of the suit proceedings. Accordingly, the learned Principal District Munsif, Trichy is directed to dispose of the suit in O.S.No.939 of 2016 within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

The Principal District Munsif,
Trichy.

+One cc to Mr.J.K.Jayaseelan, Advocate, SR.No.44711

+One cc to Mr.K.Prabhakar, Advocate, SR.No.44189

gk
RL/4C/3P/GT/SAR3/12/2/2018

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