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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.07.2018
CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(MD)No.606 of 2017

and

C.M.P.(MD)No.2696 of 2017

Singaram, S/o.Chinnaiah

... Petitioner

Vs.

1.Padmavathy, W/o.Senthilkumar

2.Thangarasu, S/o.Chidambaram

... Respondents

Prayer:- This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 25.10.2016, passed in I.A.No.549 of 2016 in O.S.No.77 of 2016, by the learned District Munsif, Aranthangi.

For Petitioner

:

Mr.M.Suresh

ORDER

This Civil Revision Petition has been filed under Article 227 of the Constitution of India, seeking to set aside the fair and decreetal order, dated 25.10.2016, made in I.A.No.549 of 2016 in O.S.No.77 of 2016, on the file of the District Munsif Court, Aranthangi, Pudukkottai District.

2.The revision petitioner has filed O.S.No.77 of 2016 against the respondents herein seeking declaration before the District Munsif Court, Aranthangi, Pudukkottai District. During the pendency of the said suit, first respondent/first defendant has filed I.A.No.549 of 2016 seeking to appoint an Advocate Commissioner. After hearing both parties, the learned District Munsif, Aranthangi, by order dated 25.10.2016, allowed the said application. Against the said order, the revision petitioner has filed the present Civil Revision Petition.

3.I have heard the learned counsel appearing for the revision petitioner and perused materials available on record.

4.The Court below has appointed the advocate commissioner only to identify and to note down the physical features of the suit property and not to find out who is in possession of the suit property as contended by the revision petitioner.

5.While dealing with the similar issue, I have already passed an order favouring appointment of Advocate Commissioner, in the case of Shanmugathai vs. Kamalammal and another reported in 2017 (2) MWN (Civil) 315, in which, it has been held as follows:-

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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 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 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 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 the dispute to have 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. Admittedly, the application for appointment of an Advocate Commissioner was filed only at the stage of proceedings in the suit and the nature of dispute could be resolved, only if the exact location of the suit property is identified, which cannot be done except by appointment of Advocate Commissioner. Noting down the physical features would not amount to culling out the evidence and no prejudice will be caused to other side in such appointment of Advocate Commissioner. The suit is of the year 2016 and already, two years have elapsed and therefore, this Court is of the view that to give speedy quietus to the issue, appointment of an Advocate Commissioner is essential.

7. In the result,

a) this Civil Revision Petition is dismissed and the fair and decretal order dated 25.10.2016, passed in I.A.No.549 of 2016 in O.S.No.77 of 2016 is confirmed;

b) the learned District Munsif, Aranthangi, Pudukkottai District, is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order to note down the physical features of the suit property along with Surveyor, with a direction to the Advocate Commissioner to file a report within a period of one month from the date of such appointment, after issuance of notice to both parties and inspection of the properties;

c) on filing the report by the Advocate Commissioner, the learned District Munsif, Aranthangi, Pudukkottai District, is directed to dispose of the suit within a period of four months thereafter.

No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-4)

To
The District Munsif,
Aranthangi, Pudukkottai District.

+1CC to Mr.M.Suresh Advocate in SR.No.73637.

SMN2

DS/PP/SAB-4.13.08.2018: 3P/3C
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