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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.(PD) (MD) No.713 of 2017
and C.M.P. (MD) No.3219 of 2017

G.Balu

... Petitioners/Respondent/Defendant

-vs-

N.Muruasen

... Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India to call for the records and set aside the fair and decreetal order passed by the learned Principal District Munsif, Trichy, Trichy District in I.A.No.477 of 2016 in O.S.No.899 of 2016 dated 24.01.2017 by allowing this Civil Revision Petition..

For Petitioners : Mr.D.Selvaraj

ORDER

The Revision Petitioner is the defendant in the suit in O.S.No.899 of 2016 on the file of the O.S.No.899 of 2016 and the suit was filed by the plaintiff for bare injunction, etc. During the pendency of the suit, the plaintiff filed an application in I.A.No.477 of 2016 for appointment of an Advocate Commissioner to inspect the suit property, which was allowed by the learned Principal District Munsif, Trichy on 24.01.2017. Challenging the same, this revision petition has been filed.

2. It is the case of the revision petitioner / Defendant that the plaintiff did not approach the Court with clean hand and there is no whisper as to how the appointment of Advocate Commissioner will help the Court to come to a logical conclusion. It is the further case of the revision petitioner that the plaintiff/respondent 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.

3. The revision petitioner states that the Trial Court, without application of mind, has simply allowed 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 plaintiff has contended that the revision petitioner claims rights over the property in the suit filed by the plaintiff for bare injunction by way of an unregistered sale deed. The revision petitioner is the adjacent owner of the suit schedule property and insisted for sale of the property to him so as to enable him to combine both the properties for enjoyment. When the plaintiff did not accede to the request of the revision petitioner, he attempted to trespass into the suit schedule property and therefore, the plaintiff filed a suit for permanent injunction. It is further contended that the plaintiff, in order to reveal the exact position, filed an application before the Trial Court for appointment of Advocate Commissioner, which was rightly allowed by the Court on the fond hope that no prejudice will be caused to other side on account of such appointment. 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 notice to other side is dispensed with, in view of the nature of disposal of this case and perused the material documents available on record.

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 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."

8. 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 justifiable and need not be reversed, as I do not find any illegality or perversity in the order impugned in this petition.



9. In the result,

(a) the Civil Revision Petition is dismissed, by confirming the order dated 24.01.2017 passed by the learned Principal District Munsif, Trichy in I.A.No.477 of 2016 in O.S.No.899 of 2016;

WEB COPY (b) the learned Principal District Munsif, Trichy, is directed to direct the Advocate Commissioner to inspect the suit property and to file a report within a period of one month from the date of receipt of a copy of this order.

(c) on filing such report, both parties are directed to file their objections, if any, within a period of two weeks thereafter 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 in Principal District Munsif, Trichy 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(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To:

The Principal District Munsif,
Trichy.

+1CC to Mr.P.SELVARAJ, Advocate, SR.No. 73656

C.R.P. (PD) (MD) No.713 of 2017
18.07.2018

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