



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2018

DELIVERED ON : 22.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.1367 of 2018

and

CMP (MD) No.5909 of 2018

Mohan

.. Petitioner/2nd Respondent/2nd Defendant

vs

1.J.Manjula

2.J.Ramkumar Ganesh ... Respondents 1 and 2/Petitioners/Plaintiffs

3.Govindammal .. Respondent No.3/1st Respondent/1st Defendant

Revision filed under Article 227 of Constitution of India against the order dated 21.2.2018 passed in I.A.No.489 of 2016 in O.S.No.56 of 2015 on the file of the District Munsif Court, Vadipatti.

For Petitioner : Mr.D.Gandhiraj
For Respondents : Mr.M.Venkatesan (for R1)

ORDER

This revision is directed against the order dated 21.2.2018 of the learned District Munsif, Vadipatti made in I.A.No.489 of 2016 in O.S.No.56 of 2015, appointing the advocate commissioner along with surveyor to inspect the suit property and measure the same with the help of revenue documents and file a report.

2. The petitioner is the 2nd defendant, respondents 1 and 2 are plaintiffs and the third respondent is the first defendant in the suit. The plaintiffs have filed the suit for declaration and permanent injunction. The plaintiffs have also sought mandatory injunction directing the defendants to remove the stones stored in front of the suit property and also remove the bamboo barricade.



3. The plaintiffs have took out an application being I.A.No.489 of 2016 under Order 26, Rule 9 CPC to appoint an advocate commissioner to note down the physical features and encroachments made therein with the help of surveyor and measure the suit property and file a report. By an order dated 14.9.2017, the learned District Munsif, appointed Thiru.B.Guru, Advocate as advocate commissioner with a direction to him to inspect the suit property after giving notice to both sides and note down the physical features of EFCB suit lane and file a report. Pursuant to the order of the learned District Munsif, the advocate commissioner inspected the suit property and noted down the physical features and filed his report on 21.11.2017.

4. Subsequently, when I.A.No.489 of 2016 was pending, the learned District Munsif, after hearing both sides, appointed the same advocate commissioner to inspect the suit property with the help of surveyor and measure the same based on the parent documents of both sides and file the report and sketch. Assailing the order of the learned District Munsif, the 2nd defendant has filed this revision.

5. I heard Mr.D.Gandhiraj, learned counsel for the petitioner and Mr.M.Venkatesan, learned counsel for the 1st respondent and also perused the materials available on record.

6. Learned counsel for the petitioner submitted that the learned District Munsif ought not have permitted the plaintiffs to prove the case by way of appointing advocate commissioner to measure the properties by way of documents and the appointment of advocate commissioner cannot be allowed to fill up the lacuna for the plaintiffs to prove their case. He would submit that the learned District Munsif erred in appointing the advocate commissioner to inspect the suit properties along with surveyor to measure the same. The learned counsel further submitted that the advocate commissioner cannot be appointed to collect the evidence. In support, the learned counsel relied upon the following decisions:

- (i)Gajendran v. Kuppu and others, reported in 2017 (3) TLNJ 238 (Civil).
- (ii)Bhoothanatha Pillai v. Manickavasam Pillai and another, reported in 2017 (1) TNCJ 1035 (Mad) (MD).

7. Per contra, the learned counsel for the respondents 1 and 2 submitted that after taking note of the fact that the report of the advocate commissioner would resolve the controversy between the parties and also reduce the oral evidence to be adduced by the parties, the learned District Munsif, directed the advocate commissioner with the assistance of the Surveyor to inspect and measure the suit property. Therefore, there is no error in the order and prayed for dismissal of the revision.

8. It appears that the dispute between the parties is common



lane. The plaintiffs have sought declaration that the said lane is common to both the plaintiffs and the defendants. The plaintiffs have filed I.A.No.489 of 2016 seeking to appoint an advocate commissioner along with surveyor to inspect and measure the suit property. However, by an order dated 14.9.2017, the learned District Munsif appointed the advocate commissioner only to note down the suit property, more particularly, EFCB lane and file a report. Pursuant to the warrant issued to the advocate commissioner, he had inspected the suit property and filed the report. In his report, the advocate commissioner stated that on the eastern side of the plaintiff house, there was a common lane measuring 28 feet. In the order impugned also, the learned District Munsif stated that a prima facie case has been established to show that there is a common lane in the disputed property and therefore, it is necessary to appoint an advocate commissioner to inspect the suit property along with the Surveyor and measure the same and file the report.

9. The aforesaid finding of the learned District Munsif appears to be in the interest of justice and to resolve the controversy between the parties. Moreover, in the facts and circumstances of the case, as observed by the learned District Munsif, the report of the advocate commissioner would be helpful to the Court to decide the suit. Therefore, there is no force in the contention of the learned counsel for the petitioner that in order to collect evidence, the learned District Munsif appointed the advocate commissioner. Further, the plaintiffs have not sought for appointment of advocate commissioner to show who is in possession of the disputed lane.

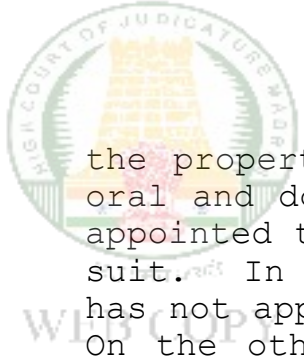
10. In *Gajendran v. Kupu and others*, supra, the learned Single Judge of this Court held:

"3. The Court cannot appoint an Advocate Commissioner in order to secure evidence which will support either of the parties. The parties to the Suit are bound to establish their respective case through oral and documentary evidence and they cannot seek the assistance of the Court to appoint an Advocate Commissioner for the collection of evidence or to establish their case. In view of the same, this Court is not inclined to consider the grounds of Revision."

11. In *Bhoothanatha Pillai v. Manickavasam Pillai and another*, supra, the learned Single Judge of this Court held as under:

"8. Further, it is well settled that Advocate Commissioner cannot be appointed to collect evidence on behalf of either of the parties to the suit."

12. It is a well settled principle of law that an advocate commissioner should not be appointed to find out the possession of



the property, which has to be adjudicated by Court after recording oral and documentary evidence. The advocate commissioner cannot be appointed to collect the evidence on behalf of either parties to the suit. In this case, as stated supra, the learned District Munsif has not appointed the advocate commissioner to collect the evidence. On the other hand, only to reduce the oral evidence, the learned District Munsif appointed the advocate commissioner along with Surveyor. Therefore, the decisions relied on by the petitioner, in the facts and circumstances of the given case, will not be applicable.

13. For the foregoing reasons, I am of the view that there is no illegality and/or perversity in the order of the learned District Munsif. No valid grounds have been made out to interfere with the order of the learned District Munsif. Resultantly, the present revision is liable to be dismissed.

14. Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RECORDS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The District Munsif Court,Vadipatti.

- 1 CC TO Mr.M.VENKATESAN , ADVOCATE IN SR No. 91278.
- 1 CC TO Mr.D.GANDHIRAJ , ADVOCATE IN SR No.91760.
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- VS
- DS RSK SAR3 12 12 2018 4P 4C

order made in
C.R.P. (MD) (PD)No.1367 of 2018 and
CMP (MD)No.5909 of 2018
22.10.2018