



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.R.P. (PD) (MD) No.1494 of 2018
and
C.M.P. (MD) .No.6509 of 2018

Sahayam @ Naresh

...Petitioner/Petitioner/Defendant

Vs.

R.Valan Antoraj Michael

...Respondent/Petitioner/Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed in I.A.No.195 of 2018 in O.S.No.105 of 2018 on the file of the Sub-Court, Tirunelveli, dated 11.04.2018.

For Petitioner : Mr.T.A.Ebenezer

O R D E R

This Civil Revision Petition has been filed against the fair and decretal order dated 11.04.2018 passed in I.A.No.195 of 2018 in O.S.No.105 of 2018 by the Sub-Court, Tirunelveli.

2.The petitioner is the defendant in the suit in O.S.No.105 of 2018 and the respondent is the plaintiff. During the pendency of the suit, the respondent/plaintiff has filed an application in I.A.No.195 of 2018 for appointment of an Advocate Commissioner and the same was allowed. Against which, the petitioner/defendant has filed the present Civil Revision Petition.

3.The learned counsel for the petitioner/defendant contended that the said appointment will not be helpful in any way for the trial Court to give quietus to the suit and hence, the order of the Trial Court is liable to be set aside.

4. I have heard the learned Counsel appearing for the petitioner and perused the records carefully.

5. It is my absolute view that Advocate Commissioner can be appointed even in a bare injunction suit, as has been held by me in several cases. In one such case, reported in 2017 (2) MWN (Civil) 315 in the case of (*Shanmugathai vs. Kamalammal and another*), I have passed the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>

11. Admittedly the present petition for appointment of an Advocate Commissioner was filed only at the stage of

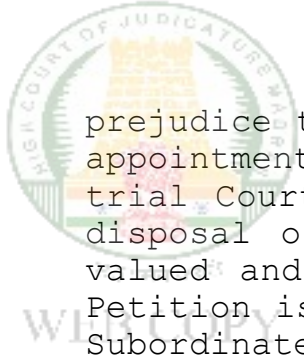


arguments, however the relief sought for in the suit is one for mandatory injunction and recovery of possession after declaration of the title. When the respective defendant deny the lie and location of disputed construction and specifically assert that the construction is within their property and there 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 Honble 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. The order of the trial Court is assailed by the defendant on the ground that without affording an opportunity of hearing of the defendant, the exparte order was passed, which will cause no



prejudice to the defendant. However, in my considered view that the appointment of an Advocate Commissioner will be helpful for the trial Court to have an idea on the property, so as to give speedy disposal of the suit. Therefore, the order of the trial Court is valued and no need to interfere with. Hence, this Civil Revision Petition is dismissed by confirming the order passed by the learned Subordinate Judge, Tirunelveli, in I.A.No.195 of 2018 in O.S.No.105 of 2018, dated 30.03.2018. Further, the trial Court is directed to instruct the Advocate Commissioner to inspect the suit scheduled property in the presence of both parties, after giving notice to both parties and file a report within a period of two weeks from the date of instruction given by the trial Court. On filing of such report, the trial Court shall dispose of the suit, on day-to-day basis without giving any adjournment to either parties within a further period of six months thereafter. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar (CS-III)

To
The Subordinate Judge,
Tirunelveli.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 COPIES)

+1cc to Mr.T.A.Ebenezer, Advocate, SR.No.74406

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KK/TE/RP/14.08.2018/SAR-3/3P-5C