



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

C.R.P.(MD)No.1545 of 2018 and
C.M.P.(MD)No.6765 of 2018

Krishnadas

... Petitioner/Petitioner/
Plaintiff

Vs.

1.Poomani
2.Yesubai
3.Kasthuribai
4.Nagakani

... Respondents/Respondents/
Defendants

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.06.2018 passed in I.A.No.235 of 2017 in O.S.No.48 of 2017 on the file of the District Munsif-cum-Judicial- Magistrate, Boothapandi.

For Petitioners : Mr.M.P.Senthil
For respondents : Mr.G. Aravinthan

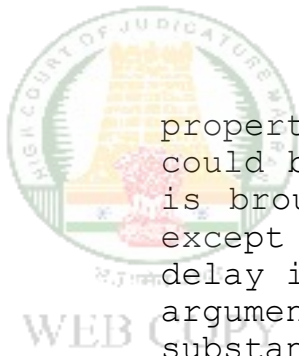
O R D E R

This civil revision petition has been filed against the fair and decreetal order dated 25.06.2018 passed in I.A.No.235 of 2017 in O.S.No.48 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Boothapandi.

2. I have heard the learned counsel appearing on either side.

3. 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:-

"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 title 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."

4. Perusal of records would show that the suit in O.S.No.48 of 2017 was filed by the revision petitioner / plaintiff for permanent injunction; and therefore, learned District Munsif-cum-Judicial Magistrate, Boothapandi, ought to have allowed the impugned application seeking appointment of Advocate Commissioner.

<https://hcservices.ecourts.gov.in/hcservices/> Therefore, I am inclined to pass the following order:-

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- this Civil Revision Petition is allowed and the order passed by the learned District Munsif-cum-Judicial Magistrate, Boothapandi, dated 25.06.2018 passed in I.A.No.235 of 2017 in O.S.No.48 of 2017, is set aside;
 - the trial Court is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order, by directing the Advocate Commissioner to inspect and file a report within a period of four weeks thereafter, by giving notice to both parties;
 - The learned District Munsif-cum-Judicial Magistrate, Boothapandi, is specifically directs the Advocate Commissioner not to collect the evidence to inspect and file a report.
 - on filing of such report, the trial Court shall dispose of the suit within a further period of four months;
 - there shall be no order as to costs and consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-III)

To

The District Munsif-cum-Judicial Magistrate,
Boothapandi.

+1CC to MR.G.Aravinthan Advocate in Sr.No.77155.

+1CC to MR.M.P.Senthil Advocate in Sr.No.77118.

TRP

DS/RSK/SAR-3 ;29.08.2018; 3P/4C

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