



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:06.06.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (NPD) (MD)No.922 of 2013

and

M.P. (MD)No.1 of 2013

1.Govindaraj

2.Janaki

... Petitioners

Vs.

Palaniyandi

... Respondent

PRAYER: Petition filed under Section 227 of Constitution of India, to call for the records and to set aside the order passed in I.A.No.18 of 2013 in O.S.No.77 of 2012 on the file of the District Munsif Court, Thuraiyur dated 22.01.2013 by allowing the Civil Revision Petition.

For Petitioners : Mr.A.Haja Mohideen

For Respondent : Mr.B.Saravanan

ORDER

This Civil Revision Petition is filed by the plaintiffs challenging the order of the trial Court appointing an Advocate Commissioner to note down the physical features with the help of surveyor.

2.The revision petitioners have filed a suit in O.S.No.77 of 2012 on the file of the District Munsif Court, Thuraiyur for permanent injunction restraining the defendant from interfering with the suit properties. The first item in the suit schedule is an extent of 0.25.0 hectares in Survey No.30/5B in Patchaperumalpatti Village (south). Similarly, the second item in the suit schedule is an extent of 2.29.0 hectares in Survey No.30/5A in the same village.

3.The suit was contested by the respondent herein and a detailed written statement was filed. It is seen that the respondent has also made a counter claim and prayed for certain rights in relation to open channel, pathway and undergone pipelines.

4.During the pendency of the petition, the defendant in the suit, namely, the respondent in the Civil Revision Petition filed an application for appointment of an Advocate Commissioner to note down the physical features in the suit property with the help of the



surveyor.

5. In the affidavit filed in support of the petition, the respondent / defendant has stated that in the suit property, there are channels, pathways and undergone pipelines. The existence of the channel and the pipelines in the survey number and the location of these features with reference to the survey numbers can be identified by the Advocate Commissioner and that therefore the respondent has filed this application, so that the required evidence can be obtained by the Commissioner.

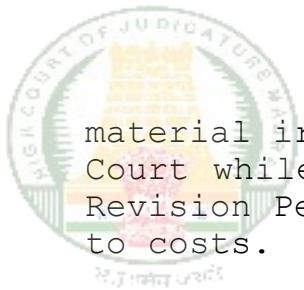
6. The Lower Court has allowed this petition and appointed the Advocate Commissioner to inspect the property after issuing notice to the parties and to note down the physical features with the help of surveyor in the particular survey number. Aggrieved by the same, the above revision is preferred by the plaintiff.

7. In the memorandum of grounds, it is stated that the application for appointment of Advocate Commissioner is an abuse of process of law which takes away the rights of the revision petitioners/plaintiffs. Further, it is also stated that the suit is for bare injunction and that the only issue to be decided is regarding possession and enjoyment of the property by the parties. Since it is a well settled preposition of law that an Advocate Commissioner cannot be appointed to find out the person who is in possession of the property, it is submitted that the application filed by the defendant in the suit cannot be permitted, as the burden lies on the petitioners to prove their title and possession of the suit schedule properties. It is also submitted that the respondent has no right to seek appointment of Advocate Commissioner to prove his case.

8. It is the case of the respondent that the existence of channel, under ground pipelines and other features pointed out by the respondent and its location with reference to survey number are very much relevant to decide the issues framed by the trial Court. It is further stated that for the purpose of deciding the Counter claim, the evidence of parties have to be considered in the light of physical features of the suit property. Hence, it is submitted by the learned Counsel for the respondent that the appointment of advocate commissioner is appropriate and justified.

9. Having regard to the peculiar facts and circumstances in this case and specific pleading in the affidavit filed in support of the petition before the Lower Court, this Court is fully convinced that the appointment of the Advocate Commissioner to note down the physical features in the presence of the surveyor is justified and the appointment of advocate commissioner will serve some purpose in the interest of both sides.

10. As a result, this Court find no merit in the above Civil Revision Petition as the petitioners have not brought out any



material irregularity or illegality in the order passed by the Lower Court while appointing the Advocate Commissioner. Hence, the Civil Revision Petition is dismissed. However, there shall be no order as to costs.

11. Having regard to the fact that the suit has been filed in the year 2012 and six years have gone, the learned Counsel for the revision petitioner seeks indulgence of this Court to give a direction to the lower Court to dispose of the suit earlier. Considering the submission made by the learned Counsel for the petitioner, the learned District Munsif, Thuraiyur is directed to dispose of the case in O.S.No.77 of 2012 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif Court, Thuraiyur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.A.HAJA MOHIDEEN, ADVOCATE IN SR No. 67012
+ 1 CC TO Mr.B.SARAVANAN, ADVOCATE IN SR No. 67243

CMR/RMI

TE/SV-MMS/SAR-2 : 18/06/2018 : 3P/6C

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