

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

C.R.P. (PD)No.3075 of 2013 &

M.P.No.1 of 2013

- 
1. Mohideen Andavar Pallivasal
represented by its Trustee
Mr.Mohammed Yousuf,
S/o.Abdul Khader,
Periya Theru, Eduthukatti Sathanur,
Tharangambadi Taluk, Nagapattinam District.
2. Mr.Abdul Gafoor .. Petitioners
- Vs.
1. Mr.Ramamurthy
2. Mr.Rajendran
3. Mr.Shanmugam
4. Mr.Kaliyaperumal
5. Mr.Sankamithru Samy .. Respondents
- सत्यमेव जयते

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India against the fair and final Order of the Principal Sub Court, Mayiladuthurai, dated 15.07.2013 made in I.A.No.59 of 2013 in O.S.No.63 of 2008.

For Petitioner : Mr.S.Sounthar

For Respondents : No appearance
ORDER

Aggrieved over the dismissal of the Interlocutory Application filed for appointment of an Advocate Commissioner to note down the physical features of the suit property, the present revision came to be filed.

2. The suit has been filed for permanent injunction against the defendant. It is the contention of the plaintiffs that they are having control over the suit property and there are many buildings in the suit property let out to various tenants and they are in occupation of the premises. In nut shell, it is the contention of the plaintiffs that there are tenants in the suit property and the plaintiffs have control over the suit property. Hence, sought for appointment of an Advocate Commissioner to note down the physical features of the suit property.

The application was objected by the respondents on the ground that the suit property is not belonging to the plaintiff and with the help of a Taluk Surveyor, the measurement can be taken up. Therefore, submitted that the Advocate Commissioner cannot be appointed to gather evidence.

The trial Court has dismissed the application on the ground that the plaintiff has to prove their case through their own evidence and they cannot

gather evidence through the Advocate Commissioner.

Heard the learned counsel for the revision petitioner and perused the Order of the trial Court. No representation for the respondent.

It is the specific contention of the plaintiff that there are buildings which are occupied by the tenants in the suit property. Whereas, it is the stand of the defendants that no body is in occupation of the building. However, the defendants have no objection for appointment of an Advocate Commissioner. Despite no objection by the respondent for appointment of an Advocate Commissioner, the trial Court has dismissed the application, as against which the present revision came to filed.

Since there are buildings which are occupied by the tenants in the suit property, appointment of an Advocate Commissioner to note down the physical features of the suit property will not amount to gathering of evidence and at the same time, it will not cause prejudice to the defendants. Infact, the report of the Advocate Commissioner will enable the Court to adjudicate the issue properly.

In view of the same, this revision is allowed and the Order of the trial Court made in I.A.No.59 of 2013 in O.S.No.63 of 2008 is set aside and the trial Court is

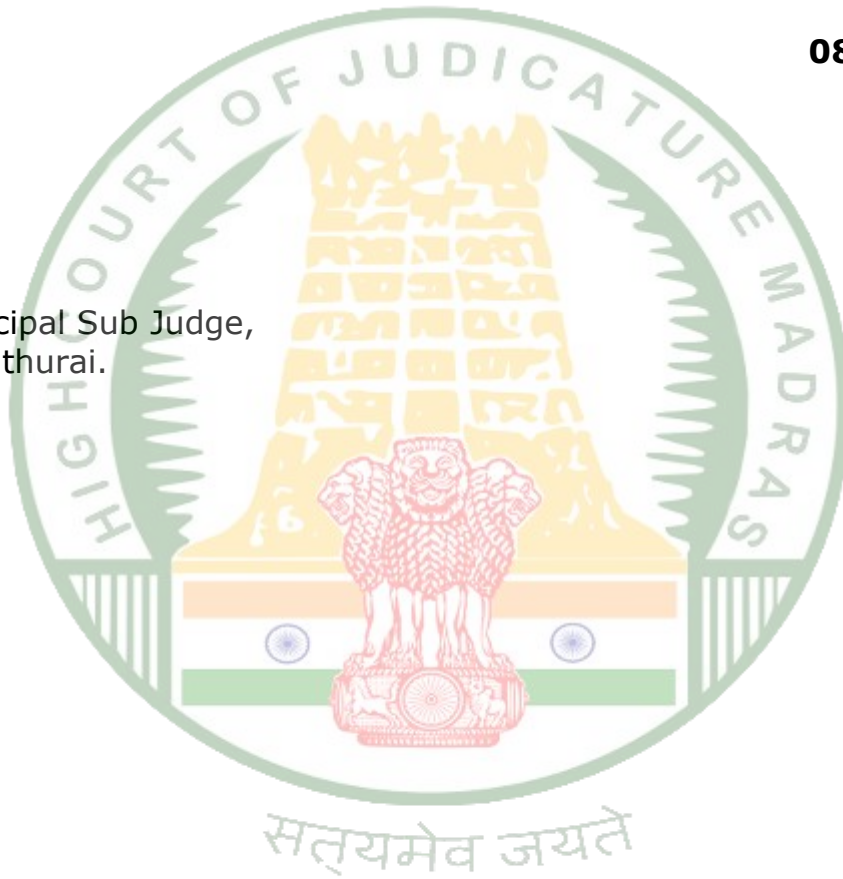
directed to appoint an Advocate Commissioner from the concerned bar and fees for the Advocate Commissioner and date for filing of the report shall be fixed by the trial Court. Consequently, the connected miscellaneous petition is closed. No cost.

08.02.2019

vrc

To

The Principal Sub Judge,
Mayiladuthurai.



WEB COPY

N.SATHISH KUMAR, J.

vrc



CRP.(PD) No.3075 of 2013

WEB COPY

08.02.2019