



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.1068 of 2012
and M.P.No.1 of 2012

1.R.Sivakumar

2.R.Nagarajan

... Petitioners/ Respondents/
Defendants 3 & 4

-vs-

1.Muruganandam @ Kulandaivel

2.Viswanathan

3.Sankarakumar

... Respondents/ Petitioners/Plaintiffs

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 18.04.2012 passed in I.A.No.222/2012 in O.S.No.258/2012 on the file of the Additional District Munsif, Madurai.

For Petitioners : Dr.R.Manoharan
For Respondents : Mr.R.Devaraj

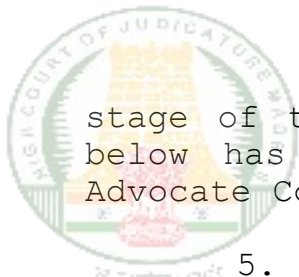
O R D E R

This Civil Revision Petition has been filed against the fair and final order passed by the Court below in I.A.No.222/2012 dated 18.04.2012 appointing an Advocate Commissioner to inspect the property and to file a report.

2.The respondents/plaintiffs filed a suit before the Court below for declaration to declare the sanction granted to the third and fourth respondents to put up a construction as null and void and for a mandatory injunction to demolish the building.

3.Pending suit, the respondents filed an application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of an Advocate Commissioner on the ground that the petitioners do not have the right to put up a construction in the property, in which, the respondents also have a right and that the sanction itself has been obtained behind the back of the respondents.

4. The Court below, while considering the application, thought it fit to appoint an Advocate Commissioner on the ground that the report of the Advocate Commissioner will reveal the present



stage of the construction done in the suit property. The Court below has also found that no prejudice will be caused, if the Advocate Commissioner is appointed and report is sought for.

5. The learned counsel for the petitioners submitted that the petitioners have already filed an application before the Court below for rejection of plaint on the ground that the suit itself is not maintainable. Without considering the said application, the Court below ought not to have proceeded further to pass an order in the application filed for appointment of an Advocate Commissioner. The learned counsel for the petitioners further submitted that there was no dispute with regard to the fact that the petitioners have put up a construction pursuant to the plan sanction that was granted by the Madurai Corporation. Therefore, till the sanctioned plan is cancelled in the manner known to law, the construction put up by the petitioners cannot be questioned. Hence, no useful purpose will be served by appointing an Advocate Commissioner and the report filed by the Advocate Commissioner will not have any bearing in the facts of the present case.

6. Per contra, the learned counsel appearing on behalf of the respondents submitted that the Court below has given a categorical finding that the report of the Advocate Commissioner will aid the Court to come to a just and fair decision at the time of disposal of the suit. The learned counsel submitted that no prejudice will be caused by appointing an Advocate Commissioner to identify the stage of construction and the appointment of the Advocate Commissioner does not amount to collecting evidence in this case. The learned counsel in support of his submissions relied upon a judgment of this Court in ***Saraswathy and another v. Viswanathan*** reported in **2002 (4) LW 142**.

7. This Court has carefully considered the submissions made on either side and the materials placed before this Court.

8. The respondents have filed a suit for declaring the sanctioned plan granted by the Madurai Corporation in favour of the petitioners/third and fourth defendants as null and void and for a consequential relief of mandatory injunction to demolish the construction that has been put up by the third and fourth petitioners.

9. The petitioners/defendants 3 and 4 also filed an application for rejection of plaint on the ground that there is a bar under the concerned enactment to maintain a suit as against the sanctioned plan granted by the Corporation. This application was pending. In the meantime, the respondents have filed the present application in I.A.No.222 of 2012 for appointment of Advocate Commissioner to visit the property and to record the physical features and file a report before the Court.



10. It is an admitted case of the petitioners that they have put up construction in the property pursuant to the sanctioned plan granted by the Madurai Corporation. Therefore, this Court does not find any valid reasons as to why an Advocate Commissioner should be appointed in order to find out the nature of the construction that has been put up by the petitioners. The appointment of an Advocate Commissioner must ultimately aid the Court to come to a conclusion in the case. The Commissioner cannot be appointed as a matter of course and just because it will not cause prejudice to the other side. Even if an Advocate Commissioner visits the property and files the report, ultimately, only if the Court below declares the sanctioned plan as null and void, the consequential prayer for mandatory injunction can be granted. If the respondents succeed in the suit, whatever may be the type of construction or the size of construction, the entire construction will be demolished. Therefore, in order to grant this relief, there is no requirement for appointment of an Advocate Commissioner. This relief will be a consequence of declaring the sanctioned plan granted by the Madurai Corporation as null and void.

11. In the considered view of this Court, the Court below ought to have taken up the application filed for rejection of plaint and decided the issue. If ultimately the Court finds that the suit is not maintainable, the whole exercise of appointing an Advocate Commissioner and getting his report will become futile. The Court below failed to take into consideration this important aspect.

12. This Court has absolutely no hesitation to interfere with the fair and final order passed by the Court below in I.A.No.222/2012.

13. In the result, the fair and final order passed in I.A.No.222/2012 dated 18.04.2012 is hereby set aside and this Civil Revision Petition is allowed. The Court below is directed to take up the application for rejection of plaint and consider the same on its own merits and in accordance with law. If, in case, the Court does not find any ground to reject the plaint, the Court below shall proceed further to complete the suit in O.S.No.258/2012 within a period of four months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar



To

The Additional District Munsif,
Madurai.

+1 CC to M/s.DR. R. MANOHARAN, Advocate (SR-90624[F] dated
01/10/2019)

+1 CC to M/s.R. DEVARAJ, Advocate (SR-90708[F] dated 01/10/2019

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