



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:20.11.2019

CORAM:

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

CRP. (MD) .No.2046 of 2012 (PD)

and

M.P. (MD) .No.1 of 2012

1.Sundarapandian

2.Arumugam

3.T.Sudha

...Petitioners/Respondents/Plaintiffs
Vs.

T.Baskaran

...Respondent/Petitioner/Defendant

PRAYER: This Petition filed under Article 227 of the Constitution of India to call for the records relating to the order passed in I.A.No.81 of 2012 in O.S.No.3 of 2012, dated 18.04.2012, pending on the file of the District Munsif Court, Uthamapalayam and to set aside the same.

For Petitioners

: Mr.J.Senthil Kumar

For Respondent

: No Appearance

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below allowing the application filed by the respondent for appointment of an Advocate Commissioner to note down the physical features of the suit property. The petitioners are the plaintiffs. They filed a suit against the respondents claiming for the relief of permanent injunction. In the said suit, the respondent filed an application under Order 26 Rule 9 of the Code of Civil Procedure for appointment of an Advocate Commissioner to note down the physical features. This petition was filed mainly on the ground that there is a pathway in the suit property and therefore, the same has to be noted down and the same will enable the Court to come to a just and fair conclusion.

2. The Court below has allowed the application on the ground that it is necessary to appoint an Advocate Commissioner in order to note down the physical features and a report will help the Court in resolving the main issue that is involved between the parties.

3. The learned counsel appearing for the petitioners



submitted that the right over the property will have to be proved only with the help of the records that are available with the parties. The appointment of an Advocate Commissioner will lead to collecting evidence and find out, who is in possession of the property. Therefore, the Court below failed to take into consideration this vital fact and has erroneously allowed the application.

4. Per contra, the learned counsel appearing for the respondent submitted that the Court below has given a very specific finding that finding out the physical features of the property will enable the Court to adjudicate the real dispute between the parties and there is absolutely no ground to interfere with the order passed by the Court below.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. The Court while considering the application has come to a conclusion that there is a dispute between the parties with regard to the physical features that are available in the property. Therefore, the Court below thought it fit to appoint an Advocate Commissioner, who can inspect the property with the help of a Surveyor and note down the physical features and submit a report and plan. The Court below has held that such an appointment was required to find out the actual nature of the property that is involved in this case.

7. This Court does not find any illegality or infirmity in the order passed by the Court below and the order of the Court below is supported by reasons and there are no grounds to interfere with the same.

8. In the result, the Civil Revision Petition stands dismissed and the Court below is directed to complete the proceedings in O.S.No.3 of 2012, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

tsg



To
The District Munsif Court, Uthamapalayam.

Copy to:
The Record Keeper, VR Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

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KK/SAR/13.12.2019/3P-4C/