



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

C.R.P. (PD) (MD) No.2148 of 2012

and M.P.No.1 of 2012

K.Noorjagan

... Petitioner/Petitioner/Plaintiff

-vs-

1.Vellaiammal

2.Rajendran

3.Kumar

... Respondents/Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 20.04.2012 in I.A.No.291 of 2012 in O.S.No.87 of 2010 on the file of the District Munsif cum Judicial Magistrate, Natham, Dindigul District.

For Petitioner : Mr.J.Anandkumar

For Respondents : Mr.B.Jameelarasu

O R D E R

This Civil Revision Petition has been filed challenging the fair and final order passed by the Court below dismissing the application filed under Order XXVI Rule 9 of the Code of Civil Procedure to appoint an Advocate Commissioner to inspect the property with the help of a Surveyor and to note down the physical features.

2.The petitioner is the plaintiff in the suit and he has filed the suit against the respondents claiming for the relief of permanent injunction. The pleadings were completed, issues were framed and the trial was also over and the case was at the stage of final arguments. At that stage, the present application came to be filed for appointment of an Advocate Commissioner.

3.It will be relevant to extract the averments made in the affidavit in order to justify the appointment of an Advocate Commissioner. The same is extracted hereunder:

"2.I already filed a suit O.S.No.87/2010 against the respondent/defendants before the learned District Munsif Natham praying for permanent injunction against him in respect to the suit property.

3.A part oral and documentary evidence appointment of Commissioner with Surveyor is absolutely necessary to file a report after inspecting



the suit property for proper appreciation and disposal of the suits.

4. In the interest of justice, it is absolutely necessary to appoint an Advocate Commissioner with help of Surveyor to inspect the suit property and note down the physical features building and revenue records therein for fair and proper disposal of the suits.

5. Considering the urgency and necessity I filed a petition for appointment of Commissioner with Surveyor."

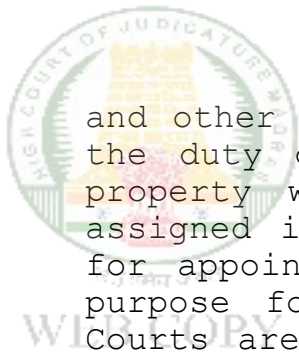
4. The application was dismissed by the Court below on the ground that there is absolutely no explanation in the affidavit as to why an Advocate Commissioner must be appointed in this case to note down the physical feature. The Court below has held that in the absence of reasons and since the petition has been filed only to collect evidence, there are no merits in the application.

5. The learned counsel for the petitioner submitted that the appointment of an Advocate Commissioner is essential in this case, since there is a dispute with regard to the boundary and the existence of the house in the suit property. The learned counsel further submitted that if the boundaries are properly identified by the Advocate Commissioner, it will enable the Court below to come to a just and fair conclusion in the suit. The learned counsel submitted that even in a suit for injunction, an Advocate Commissioner can always be appointed in order to find out, if any, localised particulars are required for the purpose of deciding the suit.

6. Per contra, the learned counsel on behalf of the respondents submitted that the affidavit filed in support of the application for appointment of an Advocate Commissioner does not contain any reasons as to why an Advocate Commissioner should be appointed in this case. The learned counsel further submitted that the case was at the stage of arguments, after the completion of the trial and at that stage, the present application has been filed only with a view to collect evidence and therefore, the Court below was right in dismissing the application.

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

8. The petitioner has filed the application for appointment of an Advocate Commissioner, without assigning any reasons in the affidavit that was filed in support of the application in I.A.No.291/2012. The petitioner has filed a suit for permanent injunction. The title to the property has been traced by the petitioner through a registered sale deed dated 07.11.1983 and it is
severed into two parts. The petitioner has also paid necessary house tax receipts



and other documents to prove his enjoyment in the property. It is the duty of the petitioner to establish his possession over the property with these documents. In the absence of any reasons assigned in the affidavit, the Court cannot presume the necessity for appointment of an Advocate Commissioner. There must be some purpose for appointing an Advocate Commissioner. Normally, the Courts are very slow in appointment of Advocate Commissioner in a suit for permanent injunction, since it may lead to collection of evidence or it may lead to finding out the person, who is in possession of the property. The appointment of an Advocate Commissioner cannot be resorted to for these purposes.

9. The Court below has given cogent reasons as to why it is not entertaining the application at the fag end of the suit. This Court does not find any illegality or infirmity in the order passed by the Court below and it requires no interference. Accordingly, the Civil Revision Petition is dismissed and the Court below is directed to complete the proceedings in O.S.No.87/2010 within a period of two months from the date of receipt of copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

RR

To

The District Munsif cum Judicial Magistrate,

Natham.

+1 CC to Mr.J. ANANDKUMAR, Advocate (SR-100151[F] dated 21/11/2019)

+1 CC to Mr.B.JAMEEL ARASU, Advocate (SR-100522[F] dated 22/11/2019)

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MK (20.12.2019) 3P 4C