



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRP. (MD) .No.2185 of 2012 (PD)

and

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

WEB COPY

Mohamed Saleem

...Petitioner/11th Respondent/
12th Defendant

Vs.

1.Kulsam Beevi
2.Junaitha Begum
3.K.D.Abdul Ravoof
4.Chinnaaji @ Mohamed Tahir
5.Ameena Beevi
6.Bazheer Ahamed
7.Ayisha Beevi
8.Jahir Hussain
9.Pappa Jon
10.Mohamed Nazir
11.Jarina Banu
12.Junaitha
13.Noorjahan
14.A.A.Jaithun Beevi
15.O.A.Mohamed Ismail

...Respondents/Respondents 1 to 10, 12/
Defendants 1 to 10, 12

PRAYER: This Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 09.04.2012 made in I.A.No.293 of 2011 in O.S.No.165 of 2004, on the file of the District Munsif cum Judicial Magistrate, Papanasam.

For Petitioner : Mr.V.Chandrasekar

For R-1, R-2
R-3 & R-5 : Mr.K.Govindarajan

For R-4 & R-6 : Dismissed vide Court
order dated 11.01.2019

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 respondents / plaintiffs for appointment of



an Advocate Commissioner to inspect the property and to file a report.

2. The respondents / plaintiffs filed a suit against the petitioner and others seeking for the relief of injunction and mandatory injunction. The pleadings were completed, issues were framed and the case was at the stage of trial and it is reported that the evidence on the side of the plaintiffs was also over. At that point of time, the present application came to be filed for appointment of an Advocate Commissioner to measure the property with the help of a Surveyor and to file a report before the Court.

3. The Court below has allowed the application on the ground that such an application was filed even at the time when the suit was filed and the same was allowed. Since the Advocate Commissioner fees was not paid, no inspection was conducted and ultimately, the petition itself was closed. Therefore, the Court below felt that no prejudice will be caused to the defendants, if an Advocate Commissioner inspects the property with the help of a Surveyor and files a report.

4. The learned counsel appearing for the petitioner / 12th defendant submitted that the petition itself has been filed only for collection of evidence. The learned counsel submitted that the evidence on the side of the plaintiffs was over and the case was at the stage of the defendants side evidence. At that stage, the Court below ought not to have entertained an application for appointment of an Advocate Commissioner. The learned counsel further submitted that the report of the Advocate Commissioner is sought to be used as an evidence by the plaintiffs and more particularly after the evidence on the side of the plaintiffs has been completed. Therefore, the learned counsel submitted that the Court below ought not to have allowed the application.

5. Per contra, the learned counsel appearing for the respondents submitted that the suit has been filed for the relief of injunction and mandatory injunction. The learned counsel submitted that the mandatory injunction pertained to the removal of the construction that has been put up by the defendants and in removing the road that has been put up by them and even the relief confines itself to the "B" Schedule property. The learned counsel submitted that the amount of construction that has been put in the "B" Schedule Property has to be independently identified since at the time of granting relief, the extent to which the mandatory injunction can be granted will have to be ascertained. The learned counsel submitted that even at the time of filing a suit, such an application was filed and it was allowed and unfortunately, it was closed due to non payment of fees to the Advocate Commissioner.

6. This Court has carefully considered the submissions made



on either side and the materials available on record.

7. The respondents / plaintiffs have filed a suit for the relief of injunction and mandatory injunction. The mandatory injunction confines itself to the "B" Schedule property that has been described in the plaint. The respondents / plaintiffs filed such an application even at the time of filing the suit and it was allowed. However, it was closed due to non payment of fees to the Advocate Commissioner. The same Advocate Commissioner has now been appointed by the Court below in order to inspect the property with the help of the Surveyor and note down the physical features. The report which would have come at the initial stage of filing of the suit was postponed due to non payment of the fees to the Advocate Commissioner and such a report is now going to be given after inspection by the Advocate Commissioner. In either case, there would be a report before the Court below. Ultimately, it is for the Court to decide the extent to which such a report is going to be used at the time of deciding the suit. The report will also be of use, if incase the suit is decreed and the Court will have to specifically state the extent to which the relief of mandatory injunction is granted. In any case, the report of the Advocate Commissioner will only be a piece of evidence, which will be of help to the Court below while deciding the suit. The appointment of an Advocate Commissioner will not cause any prejudice to the defendants and in fact, only one defendant has approached this Court challenging the order passed by the Court below.

8. This Court does not find any infirmity or illegality in the order passed by the Court below and the order of the Court below does not warrant any interference. The Court below shall refix the compensation to be paid to the Advocate Commissioner and shall fix a time limit not exceeding two weeks for filing of the report. Objections if any shall be filed within ten days thereafter by either of the parties.

9. This Civil Revision Petition stands disposed of with a direction to the Court below to complete the proceedings in O.S.No.165 of 2004, 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/-

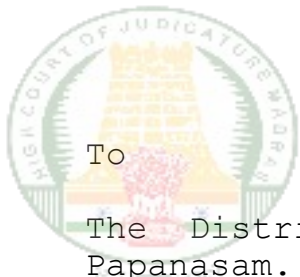
Assistant Registrar (CrI.Side)

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Sub Assistant Registrar(CS)

tsg

<https://hcservices.ecourts.gov.in/hcservices/>



To

The District Munsif cum Judicial Magistrate,
Papanasam.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-100664[F] dated
22/11/2019)

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JMN(12.12.2019) 4P : 3C