



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2019

CORAM :

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (MD)No.65 of 2014

and

M.P. (MD) No.1 of 2014

1.Ramasamy
2.Subramani
3.Deivanai

... Petitioners/Respondents/Defendants

vs.

1.Palaniyammal
2.Subramani

... Respondents/Petitioners/Plaintiffs

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 04.10.2013 passed in I.A.No.1066 of 2013 in O.S.No.347 of 2013 on the file of the Principal District Munsif Court, Karur and allow this revision.

For Petitioners : No Appearance

For Respondents : Mr.M.P.Senthil

ORDER

This Civil Revision Petition is filed to challenge the order dated 04.10.2013 in I.A.No.1066 of 2013 in O.S.No.347 of 2013, on the file of the Principal District Munsif Court, Karur.

2. Interlocutory application in I.A.No.1066 of 2013 was filed by the respondents herein under Order 26 Rule 9 CPC for appointment of an Advocate Commissioner. By the order impugned herein, the said application was allowed.

3.At the hearing on 31.07.2019, I heard the arguments of the learned counsel for the petitioners and the learned counsel for the respondents.

4.However the matter was adjourned for further arguments. At

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



the hearing today, (09.08.2019), the learned counsel for the respondents is present but the learned counsel for the petitioners is not present.

5.Nevertheless, in view of the fact that both sides substantially completed arguments, it is proposed to dispose of this civil revision petition.

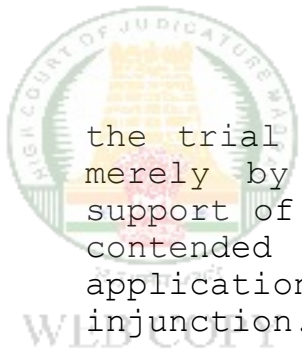
6.The learned counsel for the revision petitioners contended that the suit is for permanent injunction to restrain the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties. In a suit for bare injunction, according to the learned counsel for the revision petitioners, the trial Court ought not to have allowed the application for appointment of an Advocate Commissioner. The learned counsel further submitted that the affidavit in support of the interlocutory application for appointment of an Advocate Commissioner also does not contain any justification for the appointment of an Advocate Commissioner. In specific, Paragraph Nos.22 and 23 of the affidavit were referred to so as to contend that the respondents herein made a request for the appointment of an Advocate Commissioner to inspect the physical features of the suit properties and to minimize oral evidence and save the court's time.

7.According to the learned counsel for the revision petitioners, an Advocate Commissioner cannot be appointed merely for the purpose of minimizing oral evidence and that there is no dispute with regard to the physical features of the suit property. In order to substantiate his submissions, the learned counsel for the revision petitioners relied upon the judgments that are described below, along with the principles laid down therein:

(i) Ranganathan (died) and others Vs. Chennammal reported in 2018 (5) CTC 412, wherein at Paragraph 7, this Court held an Advocate Commissioner cannot be appointed to collect material evidence to prove possession and that in a suit for permanent injunction, it is the duty of the plaintiff to prove that he has rights over the suit properties.

(ii)T.K.Krishnamurthy Vs. Tamil Nadu Water and Drainage Board reported in 2006 (5) CTC 178, wherein, at Paragraph 9, this Court held that the report of the Advocate Commissioner cannot be the sole basis for deciding the suit because an Advocate Commissioner should not be appointed to gather evidence to prove the case of the parties.

8.On the basis of the above judgments, the learned counsel for the revision petitioners contended that the trial Court erred in allowing the application. In this connection, the learned counsel also referred to the order of the trial Court and pointed out that



the trial Court had concluded that the dispute could be resolved merely by examining the documents that have been submitted in support of the suit claim. However in spite of such finding, it was contended that the trial Court had erroneously allowed the application, especially in the context of a suit for a bare injunction.

9.In response to the said submission, the learned counsel for the respondents pointed out that there is a dispute over identity of the suit property and its boundaries. In this connection, the learned counsel referred to the rough plan of the suit schedule property and pointed out as to how the defendants' property is in one corner of the second item of the suit schedule property. In this connection, he also referred to item No.2 of the suit schedule, which describes the said item No.2 as being located to the south of the defendants' property.

10.On the said basis, it was contended by the learned counsel for the respondents that there is a dispute with regard to the identity and the boundaries of the suit schedule property and that, therefore, the appointment of an Advocate Commissioner would enable the Court to elucidate matters that are necessary for the disposal of the suit.

11.In this connection, the learned counsel for the respondent also referred to the counter affidavit that was filed by the revision petitioner herein to the interlocutory application for appointment of an Advocate Commissioner. In particular, he referred to paragraph Nos. 29 and 30 of the said counter affidavit, wherein, the respondents have contended that the suit property, survey number, four boundaries, extent and area are all false and that the suit property cannot be identified without the aid of the Village Administrative Officer and revenue authorities.

12.By referring to the said averments, the learned counsel for the respondents contended that it is the admitted position that there is a dispute with regard to the identity and boundaries of the suit schedule property. Accordingly, the learned counsel contended that a case is made out for the appointment of an Advocate Commissioner.

13.In order to substantiate his submission, the learned counsel for the respondents referred to the judgments that are described below, along with the principles laid down therein:

(i) B.Amutha Vs. Anandhi Sankara Narayanan reported in 2016 (3) MWN (Civil) 614, wherein, at paragraph Nos.22 and 23 it was held that an Advocate Commissioner can be appointed even in a suit for bare injunction and that a local inspection is the best way to ascertain encroachments or physical features, measurements etc.



(ii) Anwar Batcha and another Vs.S.Mahuedoom reported in 2014 (5) CTC 85, wherein, at Paragraph Nos. 9 to 12, it was held that an Advocate Commissioner may be appointed, if it is requisite or proper for the purpose of elucidating or making clear any matter that is necessary for the purpose of disposal of the suit.

14.By relying upon the said judgments, the learned counsel for the respondents submitted that the order of the trial Court is not liable to be interfered with and that there is no infirmity in such order. In addition, he submitted that in view of the statements in Paragraph Nos. 29 and 30 of the counter affidavit of the respondents in the interlocutory application a surveyor should also be appointed to assist the Advocate Commissioner

15.The pleadings, impugned order and oral submissions were considered carefully.

16.Although the suit is for bare injunction, as correctly contended by the learned counsel for the respondents, there is no bar on the appointment of an Advocate Commissioner if the facts and circumstances of the case warrant such an appointment. In this case, it is evident from paragraph Nos.29 and 30 of the counter affidavit of the first respondent herein in the interlocutory application that there is a dispute with regard to the boundaries and extent of the suit schedule property. It is also evident from item No.2 of the suit schedule property that the defendants' property is to the north of the suit schedule property and this fact also points to a dispute relating to the boundaries. It is, no doubt, the settled position of law that an Advocate Commissioner cannot be appointed for the purpose of proving possession as held in the judgment reported in 2006 (5) CTC 178 (cited supra) and 2018 (5) CTC 412 (cited supra). Nevertheless, as correctly contended by the learned counsel for the respondents and as held in the judgments reported in 2016(3) MWN 614, an Advocate Commissioner may be appointed even in a suit for bare injunction.

17.More over, it is also been held in several judgements of this Court that an Advocate Commissioner may be appointed when a local inspection would throw light on the dispute between the parties and also assist in minimizing oral evidence in the case.

18.For all these reasons, I am of the view that the order of the trial Court is not liable to be interfered with except to the limited extent of directing that a licensed Surveyor should be appointed to assist the Advocate Commissioner while carrying out inspection of the subject matter the property.

19.With the said observation, this Civil Revision Petition is



disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

The Principal District Munsif Court, Karur.

Copy to:

The Section Officer, (2 Copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-81275[F] dated 13/08/2019)

Order made in
C.R.P. (MD) No.65 of 2014
and
M.P. (MD) No.1 of 2014
09.08.2019

das

JMN(06.09.2019) 5P : 5C