



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 06.08.2019

CORAM

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

C.R.P. (MD) No. 684 of 2014

and

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

1.M.Padmavathi

2.M.Jaganathan

...Revision Petitioners/Respondents 1 and
2/Plaintiffs 1 and 2

Vs.

1.D.Sekar

2.D.Dhanabal

3.D.Sasikumar

4.D.Prabu

... Respondents 1 to 4/ Petitioners 1 to
4/Defendants 7 to 10

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 27.11.2013 passed in I.A.No.589 of 2013 in O.S.No.136 of 2012 on the file of the District Munsif, Thiruvaiyaru.

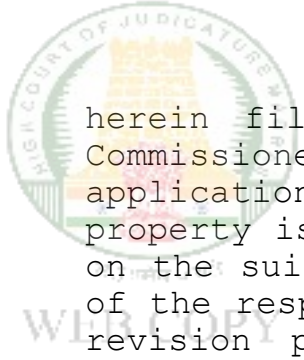
For Petitioners : Mrs.S.Vijayashanthi

For Respondents : No appearance

ORDER

This Civil Revision Petition is directed against the decretal order, dated 27.11.2013 passed in I.A.No.589 of 2013 in O.S.No.136 of 2012. The revision petitioners are the plaintiffs in the partition suit before the trial Court. The impugned order was passed in an application filed by the 7th to 10th defendants in the suit under Order 26 Rule 9 of the Civil Procedure Code for appointment of an Advocate Commissioner.

2.As stated earlier, the present Civil Revision Petition arises out of a suit for partition, which was filed by the revision petitioners herein. The defendants 7 to 10 in the said suit, who are the respondents herein, filed a written statement, wherein the title of the plaintiffs to the suit scheduled property is disputed on the basis that the respondents / defendants 7 to 10 jointly succeeded to the suit property, which was owned by a person called Duraimanikam. It is further stated in the written statement that a house was built on the suit property and that the respondents herein reside in the said house. After filing the said written statement, the respondents



herein filed an interim application for appointment of Advocate Commissioner. In the said application, it is stated that the application is filed for the purpose of establishing that the suit property is not a vacant site and that there is a house constructed on the suit schedule property, which is in the exclusive enjoyment of the respondents herein. The said application was opposed by the revision petitioners / plaintiffs and the trial Court by the impugned order, dated 27.11.2013, allowed the said application on the basis that the Advocate Commissioner would be able to ascertain whether there is a super structure or not on the suit property by taking assistance from a Surveyor and by examining the revenue records and title deeds. It is further stated in the order that the Advocate Commissioner would also note down the physical features of the suit property. On the said basis, the said application was allowed.

3.I heard the learned counsel appearing for the revision petitioners. Notice was served on the respondents herein and the said respondents entered appearance through counsel. However, at the time of hearing, the respondents were neither represented in person nor through counsel.

4.The learned counsel appearing for the revision petitioners emphasised that it is a suit for partition and that, therefore, the revision petitioners / plaintiffs would succeed or fail based on proof of title. The learned counsel also referred to the written statement and pointed out that the respondents herein have not made out a case for appointment of Advocate Commissioner at preliminary decree stage of the partition suit. In this regard, the affidavit filed in support of the interim application for appointment of Advocate Commissioner was also referred to and, on that basis, the learned counsel contended that the primary purpose of the interim application is to prove possession and collect evidence in that regard. The learned counsel further submitted that it is settled law that an Advocate Commissioner cannot be appointed either to prove possession or to collect evidence.

5.The pleadings, impugned order and oral submissions of the learned counsel for the revision petitioners were considered carefully. It is the admitted position that this is a suit for partition, which is still pending at the preliminary decree stage. Consequently, in a suit of this nature, it is not necessary to appoint an Advocate Commissioner, at this stage, unless there are specific compelling reasons to do so. On a perusal of the affidavit filed in support of the interim application, it appears that the primary reason as to why the respondents herein prayed for appointment of an Advocate Commissioner is to prove that they are in possession of the house, which is said to be constructed on the suit schedule property. Needless to say, it is the settled position that an Advocate Commissioner cannot be appointed for this purpose. In the impugned order, the trial Court held that the Advocate Commissioner would be able to ascertain whether there is a super



structure or not by taking assistance of a Surveyor and by examining the revenue records and title deeds.

6. The reasons set out in the said impugned order do not justify the appointment of an Advocate Commissioner in a suit for partition, at the preliminary decree stage. Consequently, I am of the view that there are material irregularities in the order of the trial Court, which is liable to be interfered with in exercise of Civil revisional jurisdiction. Accordingly, the Civil Revision Petition is allowed and the order of the trial Court in I.A.No.589 of 2013 in O.S.No.136 of 2012 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

gns

To
The District Munsif, Thiruvaiyaru.

Copy to:
The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.S.VIJAYASHANTHI, Advocate (SR-80356[F] dated
07/08/2019)

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KK/SAR/28.08.2019/3P-5C/