



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : .04.2019
(Reserved on 03.04.2019)

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.R.P(PD) (MD) No.661 of 2011
and
M.P(MD) No.1 of 2011

- 1) R.Jeyachandran
- 2) R.Deiva Kala
- 3) R.Ponnuthai (Died)
- 4) Gunasekaran
- 5) Umadevi

(Petitioners 4 and 5 are brought on record as LRs of the deceased 3rd petitioner vide order dated 13.7.18 Made in CMP(MD) Nos.3901 to 3903/2018)
... Petitioners/Respondents/Defendants

vs.

S.S.Devadoss ... Respondent/ Petitioners/Plaintiff

Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 03.03.2011 passed in I.A.No.17 of 2011 in O.S.No.64 of 2009 by the District Munsif Court, Madurai Taluk.

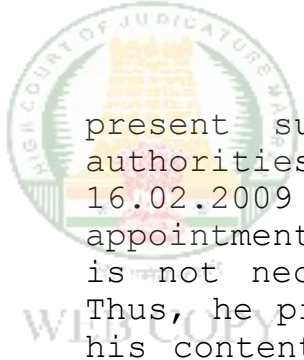
For Petitioners	: Mr.D.Malaichamy
For Respondent	: Mr.P.Thiagarajan

ORDER

Against the order of appointment of advocate commissioner, this revision petition is filed by the defendants.

2.The facts of the case are that the respondent as plaintiff filed a suit against the revision petitioners/defendants for declaration, removal of encroachment by the defendants in the suit property and for recovery of possession. Pending suit, the respondent/plaintiff filed a petition for appointment of advocate commissioner to measure the suit property with the help of surveyor and to locate and note down the physical features of the suit property. The Court below allowed the commissioner application by appointing the advocate commissioner, against which, this revision petition is filed by the defendants.

3.Learned counsel for the petitioners would contend that the Court below failed to note that even prior to the filing of the



present suit, the suit property was measured by the revenue authorities at the instance of the respondent and a report dated 16.02.2009 has been form part of the plaint documents and therefore, appointment of advocate commissioner to re-measure the suit property is not necessary and it is only an attempt to collect evidence. Thus, he prays for setting aside the impugned order. In support of his contention, he would rely on a decision of this Court reported in 2006 (5) CTC 501.

4.Learned counsel for the respondent would contend that when the respondent/plaintiff has sought the relief of removal of encroachment made by the defendants in the suit property, it is necessary to appoint advocate commissioner for local investigation and to note down the alleged encroachment and it would not be to collect evidence and the Court below has rightly allowed the commissioner application which does not require interference by this Court.

5.Heard both sides and perused the records.

6.Perusal of record shows that the suit has been filed for declaration that the suit 'A' schedule properties absolutely belonged to the plaintiff and stating that the defendants have encroached the portion of 'A' schedule which is shown as 'B' schedule properties and laid some constructions, relief of mandatory injunction was sought to remove the unauthorised construction in 'B' schedule property and also for recovery of possession of 'B' schedule property.

7.Perusal of record further shows that the Court below referred to the decision reported in 2008 (9) MLJ 359, wherein, this Court has held that to have a local investigation is the best way and to shut out that evidence would amount to denying him the right to adduce evidence and the court also will be denied of the first hand knowledge about the allegation and counter allegation.

8.The decision reported in 2006 (5) CTC 501, was also relied on by the Court below, wherein, it has been held that if the court deems fit that local investigation is requisite or proper, for the purpose of elucidating the matter in dispute, then, the appointment of advocate commissioner is justified. If there is any doubt about the area of the land, identification or location of an object, then local investigation is necessary.

9.In the case on hand, there is a dispute between the parties about the area of the land and the plaintiff himself has sought the relief of removal of encroachment made by the defendants and therefore, to elucidate the matter in dispute that whether there is any encroachment by the defendants in 'A' schedule property as alleged by the plaintiff or not, appointment of advocate commissioner is necessary.

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



10. In a decision reported in 2016 (1) ALT 134 Jajula Koteswar Rao vs. Ravulapalli Masthan Rao, it has been held that where there is an allegation of encroachment of land, advocate commissioner can be appointed for local investigation, as mere oral evidence will not aid either party to decide the issue of encroachment and such appointment cannot be said to be for collection of evidence as the object of local investigation itself is to collect evidence.

11. In the present case, the plaintiff has alleged encroachment by the defendants in 'B' suit schedule. The extent of encroachment and its present stage can be found out only through the advocate commissioner and his report will help the court to decide the issue in the suit. Even in the judgment relied on by the counsel for petitioner, it has been held that if the Court deems fit that local investigation is requisite or proper, for the purpose of elucidating the matter in dispute, then the appointment of advocate commissioner is justified. If there is any doubt about the area of the land, identification and location of an object, then local investigation is necessary. In the present case also, commissioner is appointed to locate the encroachment alleged to have been made by the defendants. Therefore, the said judgment supports the case of the respondent. In my considered opinion, appointment of advocate commissioner is perfectly justified and therefore, the interference of this Court is not necessary.

12. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

13. After the pronouncement of the order, learned counsel for the respondent brought to the notice of this Court that during the pendency of this revision petition, the suit was dismissed for default by the Court below, despite the interim order of stay granted by this Court by order dated 30.03.2011, staying all further proceedings of O.S.No.64 of 2009 till the disposal of this revision petition.

14. In my considered opinion, since there was interim order of stay in force while the suit was dismissed for default, if the suit is restored on file, the order passed in this Civil Revision Petition shall hold good.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

The District Munsif,
Madurai Taluk.

+1cc to Mr.P.Thiagarajan, Advocate, SR.No.62657

order made in
C.R.P (PD) (MD) No.661 of 2011
23.04.2019

SP/29.04.2019/4P/3C

—