

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition(PD) No.423 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2012

1. Somu Naidu
2. S. Balaji
3. G. Jayashre (minor)
4. G. Deepika(minor) ... Petitioners

1. S. Lalitha
2. Ramachandran ... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India to allow the CRP and set aside the impugned order in I.A.No.9694 of 2007 in O.S.No.3694 of 2007 dated 02.11.2010 on the file of the XVII Assistant City Civil Court, Chennai and allow the said I.A.No.9694 of 2007.

For Petitioners : Mr. Thamizharasi

For Respondents : T. Sethuraman,
for R2

ORDER

This Civil Revision has been filed to set aside the order passed by the learned XVII Assistant Judge, City Civil Court, Chennai in I.A.No.9694 of 2007.

2. The petitioners herein have filed a suit in O.S.No.3694 of 2007 on the file of the XVII Assistant City Civil Court, Chennai for permanent injunctions against the respondents herein. During the pendency of the suit, in the year 2007, the petitioners had filed an application in I.A.No.9694 of 2007 to appoint an Advocate Commissioner to survey the suit property with metes and bounds as per the Government records along with Government Surveyor and to report as to the actual plinth area of the suit property belonging to the petitioner. The trial Court, after enquiry, by an order dated 02.11.2010 dismissed the said petition. Challenging the order of dismissal, the petitioners are before this Court by way of this Revision,

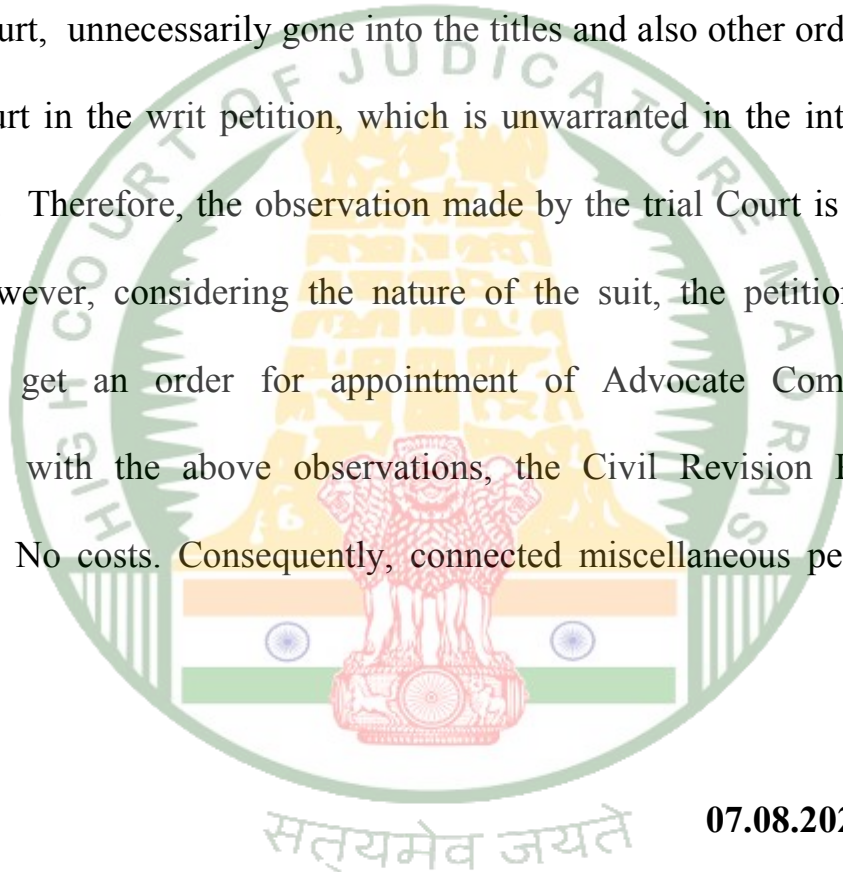
3. The learned counsel for the petitioners would submit that they have filed a suit against the respondents and also filed an application for appointment of Advocate Commissioner to measure the suit property as per

the Revenue Records with the help of surveyor. The learned trial Judge failed to consider the scope of the petition filed by the petitioner. The trial Judge gone into the records in the writ petition in W.P.No.3345 of 2006 and stated regarding the res-judicata and hence, the finding given by the learned Judge is unwarranted and it is liable to be set aside by allowing the revision and Advocate Commissioner has to be appointed.

4. Heard both sides and perused the materials available on records carefully.

5. It is noted that the petitioners have filed a suit in O.S.No.3694 of 2007 on the file of the XVII Assistant City Civil Court, Chennai for bare injunctions along with an Interlocutory application in I.A.No.9694 of 2078 for appointment of Advocate Commissioner. It is pertinent to note that the petitioners had filed a suit for bare injunctions, specifically ascertaining their possession and also the extension of the possession. But , in the suit for bare injunction, Commissioner cannot be appointed unless the petitioners admitted that the respondents already encroached the suit property and also not filed a suit for declaration, the petitioners cannot file a petition to appoint an advocate commissioner . Therefore, under the circumstances, in the suit for

bare injunction, Advocate Commissioner cannot be appointed to establish the possession or collect evidence. It is for the petitioners to prove their case by producing oral and documentary evidence and through the Advocate Commissioner, evidence cannot be collected. While dismissing the petition, the trial Court, unnecessarily gone into the titles and also other orders passed by this Court in the writ petition, which is unwarranted in the interlocutory application. Therefore, the observation made by the trial Court is herein set aside . However, considering the nature of the suit, the petitioner is not entitled to get an order for appointment of Advocate Commissioner, Therefore, with the above observations, the Civil Revision Petition is dismissed . No costs. Consequently, connected miscellaneous petitions are closed.



07.08.2020

mrp

To

1. XVII Assistant City Civil Court, Chennai
2. The Section Officer, V.R. Section, High Court, Madras

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C.R.P.PD.No.423 of 2011

P.VELMURUGAN,J.

mrp



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