



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03..01..2020
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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Civil Revision Petition No.4007 of 2019
and
C.M.P.No.26329 of 2019

Mrs.Sasikala

... Petitioner

-Versus-

Vetriselvi

... Respondent

Petition filed under Article 227 of the Constitution of India, praying to set aside the order dated 16.10.2019 on 16.10.2019 in I.A.No.352 of 2019 in O.S.No.141 of 2015 by the learned District Munsif, Thiruthuraipoondi.

For Petitioner : Mr.A.Muthukumar

For Respondent(s) : Mr.S.Kothandaraman

ORDER

This revision petition is directed against the order appointing an Advocate Commissioner with a direction to inspect the suit schedule property and measure the same and also to note down the physical features of the property.

2. The respondent is the plaintiff in the suit. She filed the suit for permanent injunction restraining the petitioner from interfering with her peaceful possession and enjoyment of the suit schedule property. In the above said suit, after the commencement of trial, the respondent had filed an application for appointment of Advocate Commissioner so as to measure the suit schedule property as per Town Survey Register and the title deeds of the property to find out whether there is any vacant site in between the suit property and the property belonging to the respondent and also to note down the physical features of the property belonging to the petitioner situated on the south of the suit schedule property including the existence of a company run by a lessee and the existence of a RCC residential house belonging to the petitioner.



3. The court below has allowed the application and appointed an Advocate Commissioner with a direction to find out the boundaries of the suit schedule property and its extent and also to note down the physical features of the suit schedule property. Challenging the same, the plaintiff is before this court with this revision petition.

4. I have heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the records carefully.

5. The learned counsel appearing for the petitioner would submit that the suit is for permanent injunction and the onus is on the plaintiff to establish her possession in respect of the entire extent of the suit schedule property and her title over the same. Noting down the physical features and taking down the measurement of the suit schedule property by the Advocate Commissioner will not in any way help to decide the issue involved in the suit. The application under revision has been filed after the commencement of trial only in order to drag on the suit and the trial court has not properly appreciated the facts and circumstances of the case and has erroneously appointed an Advocate Commissioner which requires interference at the hands of this court.

6. Per contra, the learned counsel for the respondent would contend that when there is a serious dispute regarding identity of the property between the parties and there is no vacant site available as claimed by the petitioner, appointment of Advocate Commissioner is absolutely necessary so as to help the court to find out the actual state of landed properties in question and no prejudice would cause to the petitioner, if an Advocate Commissioner is appointed for the purposes stated in the petition. The Advocate Commissioner's report to be filed in this case would certainly be helpful to the court below to decide the issue in the suit.

7. I have considered the rival submissions carefully.

8. The suit is for permanent injunction. It is claimed by the petitioner that the suit property was originally purchased by her husband on 06.08.2009 with superstructures thereon and after the removal of superstructures, her husband had sold the property, in her favour in the year 2001. Since the date of purchase, she has been in possession and enjoyment of the suit schedule property along with another property which is situated adjacent to the suit property. She was also granted patta. The



grievance of the petitioner is that the respondent is trying to interfere with her possession and enjoyment of the suit property. A detailed written statement has been filed by the respondent disputing the title of the petitioner and also her possession. The trial in the suit has commenced and the plaintiff has examined herself as P.W.1. After the examination of P.W.1 as over, the application under revision has been filed by the defendant for appointment of Advocate Commissioner. The court below allowed the application holding that though it is for the plaintiff to prove her possession through oral and documentary evidence, since there is a dispute regarding extent and boundaries of the suit schedule property, appointment of Advocate Commissioner in this case is absolutely necessary. However, the trial court has issued warrant of commission only for the purpose of finding out the boundaries and the extent of the suit schedule property and also to note down the physical features of the suit schedule property. Now, it is the settled law that in a suit for permanent injunction, it is for the plaintiff to establish her possession by proper oral and documentary evidence. When the plaintiff is claiming possession and absolute title over the suit schedule property, it is for the plaintiff to establish her possession and the title, especially, when the title is seriously disputed by the defendant. In the considered opinion of this court, mere noting down the physical features and the boundaries of the suit schedule property in the instant case would only amount to collection of evidence and there is no necessary for appointment of Advocate Commissioner at the instance of the defendant that too after the commencement of the trial of the suit. The court below without considering the same mechanically allowed the application. In the said circumstances, the impugned order is liable to be set aside.

In the result, the civil revision petition is allowed and the order passed by the the court below in I.A.No.352 of 2019 in O.S.No.141 of 2015 is set aside. No costs. Consequently, connected CMP is closed.

s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To
1.The District Munsif, Thiruthuraipoondi,
Tiruvarur District.

+1 cc to Mr.A.Muthukumar advocate sr707

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