



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2020

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.R.P. (PD) (MD)No.642 of 2020

and

C.M.P. (MD)No.4188 of 2020

WEB COPY

Selvakumari

:Revision Petitioner/Respondent/
Defendant

.. Vs ..

Tamil Selvi

: Respondent/Petitioner/Plaintiff

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair order and decreetal order, dated 20.02.2020 passed in I.A.No.38 of 2019 in O.S.No.11 of 2019 on the file of the District Munsif Court, Thiruvaiyaru and made by allow the CRP.

For Petitioner

:Mr.M.R.Sreenivasan

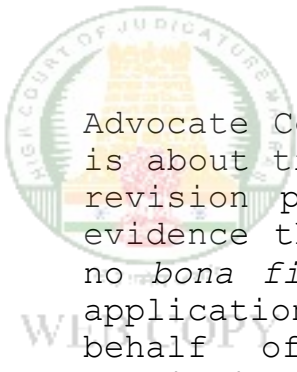
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ORDER

This Civil Revision Petition is directed against the order passed by the learned District Munsif, Thiruvaiyaru, in I.A.No.38 of 2019 in O.S.No.11 of 2019, dated 20.02.2020.

2.The revision petitioner is the defendant in the suit in O.S.No.11 of 2019 on the file of the District Munsif Court, Thiruvaiyaru. The respondent herein filed the said suit for declaration of title and for consequential reliefs, including the relief for recovery of possession in respect of a portion of the suit property, for which the declarative relief was sought for. The suit property is described as property in S.No.173C/4 in Vellamperambur Village, Thiruvaiyaru Sub-Registration District measuring to an extent of 3 1/3 cents. Even in the plaint, the respondent has pleaded that old survey number for the suit property is O.S.No.173C/4 and that the corresponding new survey number is New S.No.173C/22.

3.During the pendency of the suit, the respondent filed an application in I.A.No.38 of 2019 for appointment of Advocate Commissioner to note down the area encroached by the defendant in the suit and to submit a report with the assistance of Surveyor. The said application was contested by the revision petitioner on the ground that the plaintiff/respondent cannot seek appointment of

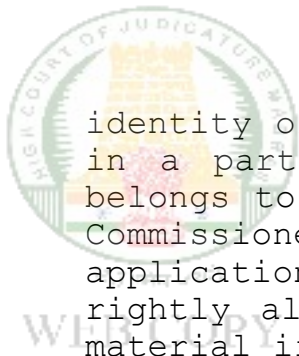


Advocate Commissioner without proving her title. When the question is about title and enjoyment of the property, it is contended by the revision petitioner that the attempt of plaintiff was to collect evidence through Advocate Commissioner and that therefore, there is no *bona fide* in the application. The lower Court has allowed the application, after referring to several precedents submitted on behalf of revision petitioner for the proposition that a Commissioner cannot be appointed to prove ones possession and that the Commissioner cannot be appointed to gather or collect evidence to prove the case of plaintiff or defendant, as the case may be. The trial Court rightly pointed out that the judicial precedents submitted by the revision petitioner have no application to the facts of this case, as the appointment of Advocate Commissioner is necessary in this case and it is not for the purpose of collecting evidence to prove the plaintiff's case. Aggrieved by the same, the defendant has preferred the above revision petition.

4.The learned Counsel for the revision petitioner reiterated the same contentions, his counter-part had pressed into service before the lower Court. The learned Counsel submitted that the application for appointment of Advocate Commissioner in this case is to collect evidence and that the order of lower Court is liable to be set aside. The learned Counsel then submitted that the plaintiff claims title only in respect of S.No.173C/4 and not the property in S.No.173C/22. He further submitted that in the absence of any documents correlating S.No.173C/4 and S.No.173C/22, the Court ought not to have presumed that the suit property false in S.No.173C/22 and directed the Commissioner to report after measuring the property in S.No.173C/4. The learned Counsel reiterated that the plaintiff has to prove and substantiate her case, rather than, fishing or collecting evidence through Advocate commissioner.

5.This Court considered the submissions of learned Counsel appearing for the revision petitioner. The suit is for declaration of title and for consequential relief of recovery of possession. It is the specific case of plaintiff that she is the owner of the property in Old S.No.173C/4 corresponding to New S.No.173C/22. Even in the counter affidavit filed before the lower Court, the revision petitioner has not raised any issue with regard to the identity of the property or the specific contention that the suit property lies in Old S.No.173C/4 corresponding to the New S.No.173C/22.

6.Having regard to the nature of pleadings and the defence set out by the revision petitioner in the written statement, the report of Advocate Commissioner will be of some assistance to the Court to resolve certain issues. Though it is true that the Advocate Commissioner can be appointed only to obtain evidence not to collect evidence, the proposition, which is well established and settled, has to be understood and this application depends upon the facts of every case. In the instant case, the dispute is with regard to



identity of the property, which is in the encroachment of defendant in a particular survey number, which according to the plaintiff belongs to her. In such circumstances, the appointment of Advocate Commissioner was to obtain evidence and cannot be treated as an application, which is meant to collect evidence. The trial Court rightly allowed the application and this Court does not find any material irregularity or error in the order, so as to interfere with the same.

7.As a result, this Civil Revision Petition is dismissed and the order passed by the learned District Munsif, Thiruvaiyaru, in I.A.No.38 of 2019 in O.S.No.11 of 2019, dated 20.02.2020, is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The District Munsif, Thiruvaiyaru.

+1 CC to Mr.R. NANDAKUMAR, Advocate (SR-16151[F] dated 07/09/2020)

C.R.P. (PD) (MD) No. 642 of 2020
07.09.2020

VB (14.09.2020) 3P 3C