

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.03.2021

CORAM:

THE HONOURABLE MRS. JUSTICE **V.BHAVANI SUBBAROYAN**

C.R.P.(PD)No.512 of 2021

and

C.M.P.No.4407 of 2021

V.T.Rajagopal

...Petitioner

Vs

P.M.Senthilkumar

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and final order dated 04.11.2020 passed in I.A.No.1 of 2019 in O.S.No.168 of 2014 on the file of the District Munsif Court, Perundurai, Erode District.

For Petitioners : Mr.M.Karthik

ORDER

The limited prayer sought for in this petition is to set aside the fair and final order dated 04.11.2020 passed in I.A.No.1 of 2019 in O.S.No.168 of 2014 on the file of the District Munsif Court, Perundurai, Erode District.

2. The petitioner herein is the first defendant and the respondent is the plaintiff in the suit in O.S.No.168 of 2014. The plaintiff has filed the suit for demarcation of boundary line and for permanent injunction restraining the first defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property. Thereafter, the first defendant had preferred I.A.No.1 of 2019 for appointment of Advocate Commissioner to note down the physical features in and around the suit properties and to file a report.

3. The learned District Munsif, Perundurai, by order dated 04.11.2020, has dismissed the application stating that the collection of evidence can only be done through oral and documentary evidences and hence, the Advocate Commissioner could not be appointed. Aggrieved by the said order, the civil revision petition has been filed.

4. The learned counsel for the petitioner submitted that the order of the trial Court was not passed on a settled proposition of law. It was further submitted that non-appointment of Advocate Commissioner

would not enable the parties to adjudicate the disputes between themselves. The learned counsel further contended that the trial Court erred in dismissing the application, which would neither cause prejudice to the respondent nor would amount to collection of evidence. The trial Court failed to consider that if there is any delay in appointment of Advocate Commissioner, reasonable costs may be imposed, instead of dismissing the application on the ground of mere delay in filing the application. Hence, the learned counsel prays to allow this petition.

5. Heard the learned counsel for the petitioner and perused the materials available on record.

6. This Court in an earlier decision in the case of **Krishnamurthy, T.K. Vs. Tamil Nadu Water and Drainage Board reported in 2006 (5) CTC 178**, has held that the report of the Advocate Commissioner alone can never be the basis for deciding the suit as Commissioner should not be appointed for gathering evidence to prove the case of the parties. It was further held that the parties should prove their case by themselves by letting in legally acceptable evidences. A similar view may also be taken

in the instant case also. The parties should prove their case by letting in oral and documentary evidences and should not have filed an application for appointment of Advocate Commissioner. Therefore, the order of the Court below does not require interference.

7. Accordingly, the order of the Court below made in I.A.No.1 of 2019 in O.S.No.168 of 2014 is confirmed and the present civil revision petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

15.03.2021

Index: Yes/No
Speaking order/Non Speaking order
sbn

To

The District Munsif Court,
Perundurai, Erode.

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V.BHAVANI SUBBAROYAN, J.

sbn



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