

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. No.808 of 2020
and
C.M.P.No.4343 of 2020

R.Settu

...Petitioner

Vs

1.Tmt.Chitra
2.M.Ramajayam

...Respondents

PRAYER: Civil Revision Petition filed under Section 227 of Civil Procedure Code to set aside the fair and decreetal order passed in I.A.No.138 of 2019 in O.S.No.9 of 2019 on the file of the District Munsif Court, Katpadi dated 04.02.2020.

For Petitioner : Mr.S.Doraisamy

For Respondents: Mr.Arun Anbumani

O R D E R

This revision petition has been filed against the order passed in I.A.No.138 of 2019 in O.S.No.9 of 2019 on the file of the District Munsif Court, Katpadi dated 04.02.2020, in and by which, the application for appointment of Advocate Commissioner came to be allowed.

2. The petitioner herein is the plaintiff. He filed the suit in O.S.No.9 of 2019 for permanent injunction against the respondents/defendants herein. During the pendency of the suit, the respondents herein have moved an interlocutory application in I.A.No.138 of 2019 seeking for appointment of an Advocate Commissioner to visit the suit schedule mentioned property and file a report. This application was resisted by the petitioner herein. According to him, there is no necessity for appointment of an Advocate Commissioner and since the prayer is based on an injunction, allowing the application for appointment of Advocate Commissioner would amount to covering evidence, which cannot be permitted under law. The respondents/defendants have to prove their case by themselves by letting in legally acceptable evidence and the report of the Commissioner would not be

required.

3. On a perusal of the order passed by the Court below, absolutely this Court does not find any irregularity or infirmity, in order to interfere with the same. In fact, the report of the Commissioner will help the Court to localize the point in issue and understand the evidence to be adduced on both sides and it cannot be taken as the proof of the plaintiff's case. On the other hand, the parties have to lead in support of their claims by allowing the application filed by the respondents for appointment of Advocate Commissioner to note down the physical features of the suit scheduled property.

4. This Court is of the view that it cannot be said that the Advocate Commissioner has been appointed to collect evidence. In fact, it is not as if the Advocate Commissioner would be noting down the physical features behind the back of the petitioner/plaintiff and the report of the Advocate Commissioner is not final and it is always for the parties to object the same by filing their objections, if any. Therefore, the petitioner can very well raise their objections to the report of the Advocate Commissioner if any adverse remarks were pointed out by the Advocate Commissioner.. Therefore, this Court does not find any merits to interfere with the present civil revision petition.

5. Accordingly, the civil revision petition stands dismissed. No costs. Consequently, connected civil miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sbn

To
The District Munsif,
Katpadi.

+lcc to Mr.S.Doraisamy, Advocate, S.R.No.6971

C.R.P. No.808 of 2020
and
C.M.P.No.4343 of 2020

VSN-II (CO)
CB(27/04/2021)

V.BHAVANI SUBBAROYAN, J.

sbn



08.02.2021

WEB COPY