



C.R.P.No.2856 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2021

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

C.R.P.(PD).No.2856 of 2015

and

M.P.No.1 of 2015

Nethasi

... Petitioner

Versus

1.Navappan

2.Ayyanar

3.Valarmathi

... Respondents

PRAYER:Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order dated 21.04.2015 made in I.A.No.975 of 2014 in O.S.No.382 of 2009 on the file of the Additional District Munsif, Villupuram.

For Petitioner : Mr.C.Munuswamy

For Respondents : No appearance

ORDER

The Revision petitioner is challenging the order passed in I.A.No.975 of 2014 in O.S.No.382 of 2009 on the file of the Additional District Munsif Court, Villupuram.



2. The petitioner has preferred this revision contending that he has filed a suit for declaration and other consequential relief against the respondents / defendants, in which, the respondents have also filed their written statement. Thereafter, the trial also began by examining the 's witnesses. At that time, the 1st defendant / 1st respondent herein filed application in I.A.No.975 of 2014 seeking appointment of Commissioner to note down the physical feature of the suit property with the help of a Surveyor and the said application was objected. In spite of that, the trial Court allowed the same by appointing an Advocate Commissioner. Aggrieved by the said order, he has preferred this revision petition.

3. At the time of arguments, the learned counsel for the revision petitioner submitted that, after trial began, in order to collect the evidence, the 1st defendant filed the application to appoint a Commissioner, which should not be entertained. For that, he relied the following authorities.

(i). **This Court's judgment in the case of *Mr.T.K.Krishnamurthy Vs. Tamil Nadu Water and Drainage Board*, reported in 2006 (5) CTC 178, where in it has been held as follows:**



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“ 9. The report of the Advocate Commissioner alone can never be the basis for deciding the suit as commissioner should not be appointed to gather evidence to prove the case of the parties. Parties should prove their case by themselves by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. But in this case Advocate commissioner was sought for and appointed to gather the evidence to disprove the case of the revision petitioner in respect of a property which is not subject matter of the Suit .”

(ii) In another case, this Court in the case of ***K.M.A.Wahab and 5 others Vs. Eswaran and another*** reported in ***2008(3) CTC 597***, it is held as follows:

“6.This Court has carefully considered the arguments put forth on either side. Order 26, Rule 9, C.P.C. States as follows:

“9.Commissions to make local investigation:- In any Suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or



C.R.P.No.2856 of 2015

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annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:+
Provided that, where the State Government has made Rules as to the persons to whom such commission shall be issued, the Court shall be bound by such Rules.”

In the above referred cases, it is held that Advocate Commissioner should not be appointed to cover the evidence to prove the case of the parties.

4. By way of reply, the learned counsel for the respondents submitted that he has not approached the Court by filing the Commissioner application, in order to collect the evidence as alleged by the revision petitioner. On the other hand, he sought for appointment of Commissioner only to note down the house situated in Item No.6 of the suit scheduled properties, which is more than 20 years, based upon the oral sale with one Murugesan and his daughter, but, this fact was not mentioned in the plaint. In order to show the existence of physical features in item No.6. he sought for appointment of Commissioner.



C.R.P.No.2856 of 2015

5. Considering both sides submissions, and on a perusal of the records, it reveals that the respondents filed Commissioner petition under Order 26 Rule 9 & Section 151 of CPC to appoint a Commissioner, and to note down the house property with the help of a Surveyor. It is true that, in Item no.6 of the suit Scheduled property in the plaint, it is mentioned as a vacant site. On the other hand, the 1st defendant contended that there is a house situated within 0.2 cents measurement and the same can be established with the help of a Commissioner whose report, would not be deemed as a collection of evidence. On the other hand, the report would minimise much of the Court work as to adjudicate the issue between the parties fairly.

6. Therefore, considering these facts, the trial Court rightly allowed this application, which does not warrant any interference by this Court. The authorities relied by the petitioner are not applicable for the reasons stated above in relation of the facts and circumstances of the case.

7. Hence, this revision petition is dismissed as devoid of merits. The suit is in the year 2009. Therefore, the trial Court is directed to dispose of the



C.R.P.No.2856 of 2015

suit itself within a period of three months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

29.11.2021

Index : Yes / No
Speaking Order: Yes/No
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1. The Section Officer, VR Section,
High Court of Madras.



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C.R.P.No.2856 of 2015

T.V.THAMILSELVI, J.

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