

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.PD.No.3060 of 2018

and

C.M.P.No.17741 of 2018

Abdul Gafoor

... Petitioner

Vs.

Shajahan

... Respondent

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 21.09.2017 made in I.A.No.413 of 2017 in O.S.No.213 of 2016 on the file of the Principal District Munsif Court, Mayiladuthurai and allow the said application.

For Petitioner : Mr.S.Sounthar

For Respondent : Mr.R.Raja Sundaraman

ORDER

This Civil Revision Petition is directed as against the fair and decretal order passed in I.A.No.413 of 2017 in O.S.No.213 of 2016 dated 21.09.2017 on the file of the learned Principal District Munsif Court,

Mayiladuthurai, thereby dismissing the petition seeking for appointment of Advocate Commissioner.

2. The petitioner is the defendant and the respondent is the plaintiff. The respondent filed the suit for permanent injunction in respect of the suit property comprised in S.No.183/2 new S.Nos.183/77, 183/90 and 183/92 classified as Natham admeasuring 15 cents. The said suit property also consists of terraced house, trees and vacant land situated at Pallivasal Street, Kadalangudi Village, Myladuthurai. While pending the suit, the petitioner filed a petition for appointment for Advocate Commissioner for the reason that he purchased the part of the suit property comprised in S.No.183/92 admeasuring 3714 sq.ft from one Soundarajan and he constructed thatched house. He is in possession and enjoyment of the said house for the past several years. Suppressing those facts, the respondent filed a suit and threatened the petitioner as if the petitioner is trying to trespass into the suit property. That apart, the respondent is trying to damage the suit property by destroying all the materials evidence. Therefore, to find out the identity of the suit property and also to note down the physical features, appointment of Advocate Commissioner is very much necessary.

3. In this regard, the learned counsel for the petitioner relied upon the judgment reported in 2016 (1) LW 159 (*Nallama Naidu Vs. Paul Pandian*), in which it has been held as follows:-

"9. A closure analysis of the plaint pleadings and the averments in the written statement of the 5th defendant exhibits certain controversy with regard to physical feature. The petitioner as well as the respondents have quarrel in respect of their respective properties. The suit schedule contains specific boundaries with measurements. Petitioner comes with a version in his written statement as to the measurements and the boundaries of the suit property. He heavily relies on his sale deed, which has been executed in his favour by the first respondent's brother. Although the suit may be an injunction suit and the relief sought for may be a personal remedy, but it relates to an immovable property. The property with respect to which the relief of injunction sought for must be identified clearly with measurements and boundaries, otherwise it will lead to so many complications.

10. The controversy-arises from the pleadings of the

parties cannot be demonstrated before the Court by any amount of oral evidence. In such circumstances, it would be just and necessary for this Court to have the lie of the property, physical features and measurements with respect to their respective title deeds, that will enable the Trial Court to take a correct decision in this matter. In this view of the matter, the impugned order is unsustainable in law."

4. Though the suit filed for permanent injunction by the respondent, the petitioner being defendant filed a petition seeking appointment of Advocate Commissioner. As observed by this Court in the above judgment, controversy arises from the pleadings of the parties cannot be demonstrated before the Court by any amount of oral evidence. In such circumstances, it would be just and necessary for this Court to have the lie of the property, physical features and measurements with respect to their respective title deeds, that will enable the Trial Court to take a correct decision in the suit. Without considering the above facts and circumstances, the Court below mechanically dismissed the petition seeking appointment of Advocate Commissioner.

5. In view of the above discussion, this Civil Revision Petition is allowed and the order passed in I.A.No.413 of 2017 in O.S.No.213 of 2016 dated 21.09.2017 is hereby set aside. The Court below is directed to appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

30.06.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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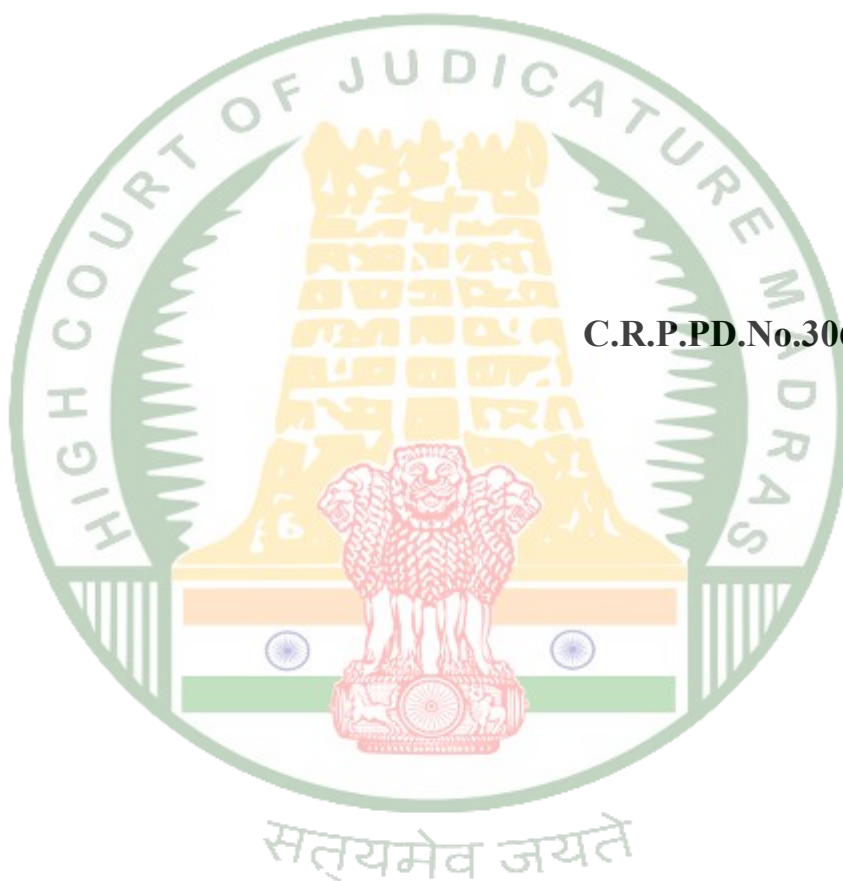
1. The Principal District Munsif Court, Mayiladuthurai.
2. The Section Officer,
V.R.Section, High Court of Madras.

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G.K.ILANTHIRAIYAN,J.

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