



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2021

CORAM

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

C.R.P (MD) No. 1792 of 2014

and

M..P (MD) No.1 of 2014

WEB COPY

K.Ramprakash ... Petitioner/1st Respondent/1st Defendant
Vs.
1.R.Panchabeeksan ...1st Respondent/Petitioner/Plaintiff
2.A.Ajees Hapees ...2nd Respondent/2nd Respondent/2nd Defendant

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the fair and decreetal order dated 20.01.2014 passed in I.A.No.36 of 2014 in O.S.No.75 of 2014 on the file of III Additional District Munsif Court, Tiruchirapalli.

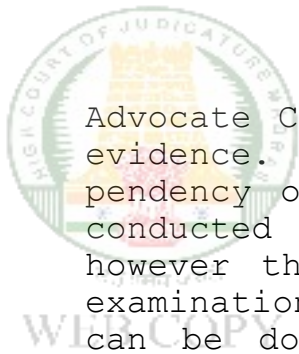
For Petitioner : Mr.M.P.Senthil
For Respondents : No appearance

O R D E R

The Revision petition has been filed against the order in I.A.No.36 of 2014 in O.S.No.75 of 2014 on the file of the III Additional Munsif Court, Thiruchirapalli challenging the order of appointment of the Advocate Commissioner.

2.The suit was filed by the respondent/plaintiff seeking for injunction restraining the defendants and their men from interfering with the peaceful possession and enjoyment of the property and for consequential relief not to make any encumbrance in respect of property. Along with the suit, the petitioner had filed IA No.36 of 2014 Under 26 Rule 9 seeking for appointment of Advocate Commissioner to inspect the properties and note down the physical features of the suit property and to submit a report. The Trial Court without affording any opportunity to the defendants by a cryptic order dated 20.01.2014 had allowed the petition.

3.The learned counsel for the revision petitioner/defendant would submit that the Trial Court without affording any opportunity to the petitioner , by a cryptic non speaking order dated 20.01.2014, had allowed the petition for appointment of Advocate Commissioner. It is a suit for bare injunction. The Trial Court without application of mind and without expressing any opinion or reason necessitating the appointment of Advocate Commissioner had passed the impugned order. The learned counsel would further submit that it is a well settled proposition that the appointment of



Advocate Commissioner cannot be done for the purpose of collecting evidence. The learned counsel would further submit that due to the pendency of the Civil Revision Petition, the Commissioner has not conducted any inspection till date and no report has been filed, however the trial has commenced and the suit is at the stage of examination of witnesses. The appointment of Advocate Commissioner can be done only for the purpose of elucidating any matter in dispute and thereby he seeks to set aside the order.

5. Heard the learned counsel appearing for the petitioner and perused the materials available on record. Though the names of the respondents are printed in the cause list, none appeared on behalf of the respondents.

6. A perusal of the materials available on record shows that the Trial Court without even affording any opportunity to the revision petitioner/defendants has passed the order, which is cryptic in nature without any reasoning. The Trial Court had not rendered any finding whether a *prima facie* case is made out necessitating the appointment of Advocate Commissioner and passed the order without disclosing any reason.

7. It is now reported that the trial has commenced. The Trial Court is directed to assess whether the appointment of Advocate Commissioner is necessary at this stage to elucidate any matter in dispute and in the event if the Trial Court feels that the appointment of Advocate Commissioner is necessary it shall afford opportunity to the revision petitioner/defendant and after hearing both the sides and shall pass orders in accordance with law.

8. In view of the above order dated 20.01.2014 passed in I.A.No.36 of 2014 is set aside and the revision stands allowed. The matter is remitted back to the Trial Court. No costs. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sn/aav

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The III Additional District Munsif Court, Tiruchirapalli.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-30276[F] dated 27/09/2021)

C.R.P(MD) No. 1792 of 2014
and

M..P(MD) No.1 of 2014
24.09.2021

PK (CO)

KB(27.10.2021) 3P 3C