



C.R.P.No.478 of 2021
and C.M.P.No.4197 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

C.R.P.No.478 of 2021

and

C.M.P.No.4197 of 2021

1.Chinnasamy

2.Sasikumar

... Petitioners

Vs.

Palanimuthu

... Respondent

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal orders dated 07.02.2020 passed in I.A.No.1199 of 2019 in O.S.No.120 of 2015 on the file of the Principal District Munsif Court, Kallakurichi.

For Petitioners : Mr.S.Mukunth

For Respondent : Mr.V.Lakshminarayanan



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ORDER

The present petition is filed against the fair and decreetal orders dated 07.02.2020 passed in I.A.No.1199 of 2019 in O.S.No.120 of 2015 on the file of the Principal District Munsif Court, Kallakurichi.

2.The revision petitioners are the plaintiffs in O.S.No.120 of 2015 on the file of the Principal District Munsif Court, Kallakurichi. They filed the suit for a permanent injunction restraining the respondent/defendant from interfering with their peaceful possession and enjoyment of the suit property.

3.The respondent/defendant filed his written statement and both the parties went for trial after settlement of issues. The plaintiffs closed their side of evidence on 30.07.2019 and thereafter two witnesses were examined on the side of defendants. Subsequently, the present revision petitioners/plaintiffs filed a petition in I.A.No.1199 of 2019 under Order XXVI Rule 9 CPC for appointment of an Advocate



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Commissioner to inspect the suit property and to note down the physical features.

4.The respondent filed his counter and after full contest, learned Principal District Munsif, Kallakurichi, vide her orders dated 07.02.2020, dismissed the said application, aggrieved over which the present Civil Revision Petition is filed.

5. Heard Mr.S.Mukunth, learned counsel appearing for the revision petitioners and Mr.V.Lakshminarayanan, learned counsel appearing for the respondent.

6. The main contention of the revision petitioners is that DW1 during the course of cross examination denied the existence of a building on the northern side of the suit property and therefore, appointment of an advocate commissioner is absolutely necessary to find out the same.



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7.At the outset, it may be observed that the suit is filed for bare injunction. The plaintiffs have to prove their possession over the suit property by adducing acceptable oral and documentary evidence. The existence of a building on the northern side of the suit property may / may not be necessary for the just decision of the case. If the defendants want to assert the existence of a building he can adduce sufficient evidence for the same. The petition has been filed after the commencement of the trial. The trial Court had observed in its orders dated 07.02.2020 thus

"7.At the outset, it is seen that the petitioners who are the plaintiffs in the main suit have filed the petition seeking for appointment of Advocate Commissioner to inspect the suit property with the help of Surveyor and the reason has been stated as that it would help to bring to light the Court.

8.It is relevant to note the stage of the suit which is at the stage of cross of DW1. It is pertinent to note that when the case has been posted for leading evidence, the present petition has been filed by the petitioners for appointment of Advocate Commissioner and the same is under the pretext of collecting



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9.Thus, it is clear that the purpose of appointing an Advocate Commissioner is to elucidating any matter in dispute and nto for other than required. In Radha v. Palayammal, 2009(1) TNLJ 122, the Hon'ble Madras High Court has emphasized thus:

"It is to be noted that the plaintiffs are not claiming possession of the suit property. Admittedly an appointment of commissioner by a Court of law is purely a discretionary one. It cannot be gain said that the parties to the litigation can produce the best possible evidence to project/substantiate their case before the Court. But an Advocate Commissioner cannot be appointed to gather/produce evidence, when the parties to the litigation themselves can produce the same."

(Underlining supplied)

10.Moreover in the decision referred above in M.Devasagayam Vs. D.Arulappan, 2009(1) TNLJ 100, the relevant portion would run thus:

"It is to be noted that an order for an appointment of



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commissioner is purely a discretionary one in the hands of a trial court. Further it is well settled principles of law that an Advocate Commissioner cannot be appointed to gather/collect evidence, when, in fact, the party himself can produce evidence himself before the court in respect of the subject matter of dispute between the parties. Therefore, this court is of the considered view that IA.No.3782 of 2007 praying for an appointment of commissioner is only a luxury and not necessity and in that in view of the matter, this revision petition is dismissed without costs."

(Emphasis supplied)

11.The above principles enshrined above would show that the Advocate Commissioner cannot be appointed for the purpose of collecting evidence. Such materials to be adduced and made available by the parties by way of oral and documentary evidence. Accordingly, this Court comes to the conclusion that the petitioners are not entitled for the relief as prayed for in the instant petition."

I do not find any infirmity in the orders passed by the trial Court. The trial Court is directed to dispose of the case as expeditiously as possible.



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8. With the above directions, the Civil Revision Petition is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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R. HEMALATHA, J.
mtl

To

- 1.The Principal District Munsif Court, Kallakurichi.
2. The Section Officer, VR Section, High Court, Madras.

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