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C.R.P.(NPD)No.1249 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2022

CORAM:

THE HONOURABLE Mr. JUSTICE S.SOUNTHAR

C.R.P.(NPD)No.1249 of 2016
and C.M.P.No.6827 of 2016

1.K.Sundari
2.Kumar
3.Kuzhanthaivelan

...Petitioners

Versus

G.Venkatasubramaniam

...Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Order and Decree dated 14.12.2015 made in I.A.No.834 of 2015 in O.S.No.352 of 2014, on the file of the Additional District Munsif Court, Cuddalore.

For Petitioner :Mr.D.Ravichander

For Respondent :No Appearance

O R D E R

Aggrieved by an order dismissing the petition seeking appointment of Advocate Commissioner to note down the physical features of the building located in the suit property, the plaintiffs/petitioners have come up with this revision.



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2. The petitioners have filed a suit for bare injunction against the respondents in O.S.No.352 of 2014 on the file of the Additional District Munsif Court, Cuddalore. The petitioners sought for an injunction restraining the respondent from demolishing any portion of the building in the suit property by a decree of permanent injunction.

3. According to the revision petitioners, they are the tenants of the suit property. Since the respondent who is a neighbour, attempted to demolish a portion of the building in the suit property, they were constrained to file a suit for injunction against the respondent.

4. The respondent filed his written statement disputing the description of the suit property. According to the respondent, the description of the property is not correct and the revision petitioners/plaintiffs have given wrong boundaries to the suit property. He further denied the allegation in the plaint that he attempted to demolish the building in the suit property.

5. The revision petitioners/plaintiffs filed a petition in I.A.No.834 of 2015, seeking appointment of Advocate Commissioner to note down the



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physical features of the building in the suit property. In support of the said application, it was averred that even prior to filing of suit, the respondent in the guise of demolishing their own property, had damaged a portion of the suit building and only on objection from the petitioners, their attempt of demolition was stopped. Noting down the physical features of the building will show the highhanded act of the respondents and it will enable the Court to decide the controversy in the suit. In the counter to the said application, it was reiterated by the respondent that the description of the suit property is wrong and the revision petitioners have given wrong boundaries and unclear notice.

6. The learned District Munsif, dismissed the application on the ground that it is a settled law that in a suit for injunction, appointment of Advocate Commissioner is not necessary.

7. Aggrieved by the same, the plaintiffs/petitioners have come up with this revision.



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8. Heard the arguments of the learned counsel for the petitioner

and there is no representation for the respondent.

9. Perused the pleadings of the parties enclosed in typed set of papers. In the Pleadings of the parties, there is a controversy with regard to the description of the suit property. The respondent disputed the plaint description in the written statement as well as the counter filed in I.A.No.834 of 2015. When there was a dispute with regard to the description of the suit property, the best way to find out the truth would be by appointing an Advocate Commissioner to note down the physical features and the Advocate Commissioner's report would reveal the real facts, so as to enable the court to solve the controversy before this Court. The Court below completely overlooked the controversy in the pleadings with regard to the description of the suit property.

10. In support of his contention, the learned counsel for the petitioner has relied on the judgment reported in Manu/TN/0754/2005 in Settu Vs. Raja and others, wherein it was observed as follows:



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“Thus the main point involved in the suit appears to be - Whether the Plaintiff has really encroached a portion of the pathway interfering with the Defendants pathway right. Thus there is a bonafide dispute regarding the location of the house. Regarding this, evidence can be obtained only by local inspection and measuring the suit property with the help of a surveyor. The Plaintiff having filed the suit for permanent injunction is bound to prove his case. All opportunity must be afforded to him to produce the best possible evidence available. The Appointment of Commissioner and the Commissioner's report is one such mode of proof to elucidate the physical features and such other aspects. By appointment of an Advocate Commissioner considerable oral evidence would be reduced. No serious prejudice would be caused to the Respondents/Defendants by appointment of an Advocate Commissioner.”

11. It is also appropriate to mention the observation of this Hon'ble Court reported in 2016-1-LW-159 in Bose Vs. Chokalingam, which reads 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.”

12. The utility of Commissioner's report based on local investigation was well explained in Ponnuswamy Pandaram Vs. Salem



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Vaiyappamalai Jangamar Sangam reported in 1985 1 MLJ P.380, wherein his

Lordship Mr.Justice Nainar Sundaram, observed as follows:

“A controversy, as we could see from the pleadings, has arisen as to whether the constructions put up by the third defendant are within his land or whether they have encroached into the lands of the plaintiff. A local investigation is the best way to find out the position and the party, namely, the third defendant coveting to place the evidence before the court through local investigation by the Commissioner cannot be shut out of that right. A misconception has weighed in the mind of the Court below when it reasoned that there is no dispute about the ownership of S.No.289/1 by the third defendant. That is not the point in issue, Shutting out the evidence which a party is entitled to place before Court to substantiate his case, definitely decides that right of the party, adversely against him and in this view, the order passed by the Court below is a 'case decided' and apart from that, on merits the order passed by the Court below comes within the mischief



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of the ratio adumbrated in S.115 of the Code. There has been a failure to exercise jurisdiction vested in it by the, Court below to a patent misconception of the position and this obliges me to interfere in revision.

13. In the present case, there is a definite controversy in the pleadings of parties with regard to description of suit property. Hence, applying the ratio in the above referred cases. I hold appointment of Advocate Commissioner to identify the suit property and to note down the physical features is absolutely necessary and hence the order impugned in revision is liable to be set aside.

14. Further in the affidavit filed in support of the petition seeking appointment of Advocate commissioner, the revision petitioner also submitted that the defendant already damaged the portion of the suit building and physical features available on ground will enable the Court to come to a correct conclusion regarding the issue involved in this Court. If the portion of the suit building is already damaged, the Advocate Commissioner during local inspection can very well note the same in the presence of respective parties and



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mention it in his report before the Court below. It will enable to the court to understand the cause of action or the scenario which compelled the plaintiff to knock at the doors of Court of law.

15. In view of the controversy in the pleadings of the parties with regard to the description of the property, and also in view of the averments found in the affidavit filed in support of the petition seeking appointment of Advocate Commissioner that there was an attempt on the part of the defendant to demolish a portion of the building earlier, this Court deems it appropriate to appoint an Advocate Commissioner to identify the suit property based on the description found in plaint and note down the physical features found thereon. Therefore, the order passed in I.A.No.834 of 2015 in O.S.No.352 of 2014 is set aside and the said application is allowed with above said direction to the Advocate Commissioner. Consequently, connected miscellaneous petition is closed. No costs.

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Index: Yes/ No

Speaking Order / Non-Speaking Order



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S.SOUNTHAR, J.

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To

The Additional District Munsif Court, Cuddalore.

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