



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.03.2022
Pronounced on	08.03.2022

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

Civil Revision Petition (PD) No.3980 of 2016

Kanniammal ... Petitioner

Vs.

Chellamuthu ... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and final order passed in I.A.No.331 of 2016 in O.S.No.386 of 2007 on the file of the District Munsif Court, Udumalpet dated 20.10.2016.

For Petitioner : Mr.B.Gopalakrishnan
for Mr.B.Kumarasamy

For Respondent : No Appearance

ORDER

This Civil Revision Petition was filed challenging the fair and decretal order passed in I.A.No.331 of 2016 in O.S.No.386 of 2007 dated 20.10.2016 passed by the learned District Munsif Court, Udumalpet.



2. The revision petitioner is the plaintiff in the suit in O.S.No.386 of 2007 which has been filed for permanent injunction, restraining the defendant from interfering with the peaceful possession and enjoyment of the property and the application in I.A.No.331 of 2016 in O.S.No.386 of 2007 was filed under Order XXVI Rule 9 r/w section 151 of Civil Procedure Code by the revision petitioner/plaintiff for appointment of Advocate Commissioner.

3. Respondent viz., A.Selamuthu is the defendant in the Suit in O.S.No.376 of 2007 and the application in I.A.No.107 of 2008 in O.S.No.376 of 2007 was filed under Order XXVI Rule 9 r/w section 151 of Civil Procedure Code by the respondent/defendant for appointment of Advocate Commissioner and the same was allowed by the Trial Court in its vide order dated 21.06.2011 and appointed an Advocate Commissioner to measure the suit schedule property with the aid of Taluk Surveyor and further directed to visit the suit schedule property by giving notice to both the parties. The Advocate Commissioner was directed to file her report with the plan by 21.06.2011. The trial Court in its order dated 06.01.2016 dismissed the I.A.No.107 of 2008 in O.S.No.376 of 2007 and the relevant portion is extracted as follows:



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‘ The suit is filed of the year of 2007. The Advocate Commissioner was appointed in the year 2011. Till date no steps have been taken to indicate the pending. No representation of the Advocate Commissioner on the petitioners' the application this trial proceedings are unnecessarily stopped for more than 4 years. As such the court finds no reason to adjourn the application. Both sides are not ready to cooperate to the Advocate Commissioner to execute the warrant. As such the petition is closed. At this stage. No costs.’

4. Subsequently, the revision petitioner/plaintiff filed the application in I.A.No.331 of 2016 under Order XXVI Rule 9 r/w section 151 of Civil Procedure Code for appointment of an Advocate Commissioner to measure the suit schedule property with the aid of Taluk Surveyor.

5. Heard the learned counsel for the petitioner/plaintiff and perused the material documents available on record.

6. The respondent/defendant filed the suit in O.S.No.376 of 2007 against the revision petitioner/plaintiff, praying for permanent injunction,



restraining the revision petitioner/plaintiff from interfering with the peaceful possession and enjoyment of the suit schedule property.

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7. Whereas, the suit in O.S.No.386 of 2007 has been filed by the revision petitioner/plaintiff against the respondent/defendant, praying for permanent injunction, restraining the respondent/defendant from interfering with the peaceful possession and enjoyment of the suit schedule property.

8. It is apparent that the prayer in I.A.No.107 of 2008 in O.S.No.376 of 2007 and I.A.No.331 of 2016 in O.S.No.386 of 2007 are one and the same. Since, the relief sought by both the parties are one and the same, an Advocate Commissioner was appointed in I.A.No.107 of 2008 in O.S.No.376 of 2007 and the application was dismissed by the Trial Court on 06.01.2016 stating that there was no co-operation from either side of the party.

9. In the sale deed dated 08.12.1982 executed in favour of the respondent/defendant the rights in regard to the pathway is clearly mentioned. Hence, there is no necessity to appoint an Advocate Commissioner.



10. On perusal of the records, it is clear and evident that both the suits viz., O.S.No.376 of 2007 and O.S.No.386 of 2007 are filed for the same relief that is for a permanent injunction. So far as, in regard to the relief of permanent injunction, the issue to be decided is whether the suit schedule property is in possession of the revision petitioner/plaintiff or not. It is a well settled law, an Advocate commissioner cannot be appointed to collect the evidence and it is for the plaintiff to prove the case by oral evidence and documents. The parties of the suit has to prove who is in possession of the suit schedule property by examining the evidence and documents and not through an Advocate Commissioner.

11. Moreover, it cannot be decided by appointing an Advocate Commissioner to prove who is in possession of the suit schedule property. Even though, the respondent/defendant has given no objection for an appointment of Advocate Commissioner to note down the physical features of the suit schedule property, the commissioner cannot be appointed since, the nature of the commission is to collect the evidence and to prove the possession of the suit schedule property and nothing else.

The Trial Court taking into consideration of above facts has rightly



dismissed the application in I.A.No.331 of 2016 in O.S.No.386 of 2007.

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12. It can be seen from the order passed by the trial Court in I.A.No.107 of 2008 in O.S.No.376 of 2007 dated 06.01.2016 that the suit has been kept pending due to the filing of application for an appointment of Advocate Commissioner and the same was dismissed for the reason that there was no co-operation from both the party, which caused the inordinate delay in disposing the suit by the trial Court.

13. I rely on the judgments rendered by *this Hon'ble Court in C.R.P(PD)No.1461 of 2005 dated 13.09.2006 reported in 2006-4-L.W.525 in the case of Rangasamy Vs. The Superintending Engineer, Tamilnadu Electricity Board, Mettur Electricity System, Mettur Dam, Salem District and others*, it was held that an Advocate Commissioner cannot be appointed to collect the evidence and it is the duty cast upon the plaintiff to prove the case by adducing an oral and documentary evidence. For better appreciation the relevant paragraphs of the judgment are extracted hereunder:

“7. The object of the local investigation under Order 26 Rule 9 is not to collect evidence. Such materials enable the Court to properly and correctly understand and assess the evidence on



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record, which clarifies or explains any point, which is doubtful on the evidence on record. The Court shall not appoint an Advocate Commissioner for taking measurement of the suit properties in a mechanical manner without considering the need for appointment of an Advocate Commissioner. If the Court deems fit that local investigation is requisite or proper, for the purpose of elucidating the matter in dispute, then the appointment of an Advocate Commissioner is justified. If there is any doubt about the area of the land, identification or location of an object, then local investigation is necessary. In the instant case, there is absolutely no doubt about the location of the well in R.S.No.209/10 and that therefore, there is no necessity for measurement.

8. The Lower Court has properly considered the materials on record and found that there is no need to appoint an Advocate Commissioner. There is no error in the said order warranting interference”.

and in ***C.R.P(PD)No.1721 of 2005 and C.M.P.No.19371 of 2005 reported in 2006-4-L.W.516 in the case of Chinnathambi and others Vs. Anjali.*** The relevant paragraphs of the judgment are extracted hereunder :

“8. In the instant case, the suit is for permanent injunction and admittedly, interim injunction has been granted on 19.11.2003 and nearly after 1 year and 7 months, the petitioners have taken out an application for appointment of an Advocate Commissioner. Even as per the averments made in the petition, the respondent/plaintiff has stated that the petitioners/defendants are making arrangements to obliterate her cart-track or land



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and also proposed to encroach a further extent of 0.09 cents. Whereas, there is no averment in the plaint that there is an encroachment of land.

It is a well accepted principle of law that an Advocate Commissioner should not be appointed to find out the possession of the property. Which has to be adjudicated only by oral and documentary evidence. Under such circumstances, the order of the Lower Court suffers from material irregularity and it is not in accordance with the principles laid down in the above decisions”.

14. Considering the facts and circumstances of the case, and for the foregoing reasons, this Court do not find any ground to interfere with the order passed by the learned District Munsif, Udumalpet and the same is hereby confirmed. Accordingly, this Civil Revision Petition stands dismissed. Consequently, connected C.M.P.No.20162 of 2016 is closed. No costs.

15. Since, the suit is of the year 2007 and in the interest of justice, the trial Court is directed to dispose of the suit as expeditiously as possible, preferably, within a period of twelve (12) months from the date of receipt of copy of the order.

08.03.2022



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Index : Yes/No
Speaking Order/Non-Speaking Order

C.R.P(PD)No.3980 of 2017



To:

The District Munsif Court,
Udumalpet.



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C.R.P(PD)No.3980 of 2017



J.SATHYA NARAYANA PRASAD,J.

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C.R.P(PD)No.3980 of 2016

Pre Delivery Order in
C.R.P(PD)No.3980 of 2016

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