



CRP No.2191 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2022

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

CRP.No.2191 of 2019  
and CMP.No.14121

D.Malarvannan  
Rep. by his Power Agent  
J.Dhakshinamoorthy

..Petitioner

Vs.

1.M.Gnanasekaran  
2.Ramamoorthy

..Respondents

**Prayer:** Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the order in I.A.No.216 of 2018 in O.S.No.413 of 2012 on the file of the Principal District Munsif Judge, Alandur, dated 28.02.2019.

For Petitioner : Ms.Hemapriya

For Respondents

For R1 & 2 : Mr.J.Sudhakaran

### **ORDER**

The civil revision petition has been filed as against the order dated 28.02.2019 passed in I.A.No.216 of 2018 in O.S.No.413 of 2012 on the file of the Principal District Munsif Judge, Alandur, thereby dismissing the petition for appointment of an Advocate Commissioner.



2. The petitioner is the plaintiff. He filed a suit for permanent injunction in respect of the suit property as against the respondents. The said suit was filed in the year 2012 and after a period of six years, the petitioner filed an application for appointment of Advocate Commissioner to measure and inspect the suit property and to fix the southern boundary and to file a report and plan.

3. Admittedly, the petitioner filed a suit for permanent injunction in respect of the suit property. After a period of six years, the petitioner had come forward with a petition for appointment of Advocate Commissioner that too, in the suit for permanent injunction. To decide the possession and enjoyment of the suit property, Advocate Commissioner cannot be appointed and it would amount to collection of evidence. It is a well settled law that Advocate Commissioner cannot be appointed to note down the factum of possession or the enjoyment of the suit property.

4. The learned counsel for the petitioner relied upon the judgment reported in **(2016) 8 MLJ 368** in the case of **B.Amutha Vs. Anandhi Sankara Narayanan**, wherein this Court held that the Provision of Order 26 Rule 9 of CPC contemplates Commissions to make local investigations to be requisite appointment of Advocate Commissioner to visit the suit property and also



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demarcate the property taking assistance from the qualified surveyor and also note the physical features of the property in question is qualified. No prejudice would be caused to him by appointment of an Advocate Commissioner for the purpose of inspecting the property. Whereas in the case on hand in lieu of a decree, respondents are enjoying the property in S.No.260/10. The same property is claimed by the petitioner herein. Therefore, the appointment of Advocate Commissioner would amount to collection of evidence and as such, the judgment cited by the learned counsel for the petitioner is not applicable to the case on hand.

5. In view of the above, the civil revision petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

09.12.2022

Speaking/Non-speaking order

Index : Yes/No

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To

The VII Judge, Appellate Authority,  
Court of Small Causes,  
Chennai.



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**G.K.ILANTHIRAIYAN.J.**

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