



A.No.3915 of 2022 in  
C.S.No.883 of 2018

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**C.V.KARTHIKEYAN.,J.**

This Application had been filed under Order XXVI Rule 9 C.P.C., to appoint an Advocate Commissioner to inspect the premises which is under *lis* between the plaintiff and the defendant.

2. The background facts are that the defendants had purchased the property. At that point of time, the plaintiff was a tenant in a portion of the property, running a shop. Over course of time, the defendants wanted to renovate the building. Naturally they wanted possession of the shop which was under the occupation of the plaintiff. To this extent, there is convergence of facts.

3. It is the contention of the plaintiff that an agreement had been entered into with the defendants that on renovating the building, the defendants would handover back the shop premises to the plaintiff.

4. This contention by the plaintiff is denied and disputed by the defendants who in fact state that such an agreement is not a true agreement and has been fabricated.

5. These are issues to be examined during the course of the trial.

The plaintiff had entered into the witness box and had tendered his



evidence. Thereafter the plaintiff wanted to mark photographs to show the nature of the building and that shops had actually been re-built in the building. Those photographs were not permitted to be marked.

6. Now this Application has been filed under Order XXVI Rule 9 C.P.C. to inspect the premises and take photographs to evidence that shops have already been built. An Advocate Commissioner cannot be used as an instrument by the plaintiff or by the defendants to take evidence and photographs. Advocate Commissioner is only an extended arm of the Court to assist the Court, if at all there is any dispute regarding the nature of the building or with respect to identity of the property.

7. In the instant case, the dispute is whether the agreement on which the plaintiff relies and bases his case is true, valid and genuine agreement and binding on both the parties. That fact has to be established first. The evidence relating to such agreement will have to be analyzed after they have been adduced before this Court. Therefore, the plaintiff and the defendants should concentrate on that particular agreement, which the plaintiff claims, is binding between the parties, and which the defendant denies and disputes. After the evidence is recorded in its entirety, then, on the basis of the evidence recorded, the plaintiff or the defendants can move a fresh application for appointment



of Advocate Commissioner and at that time, base the necessity on the evidence recorded. The Court shall then take a decision whether to appoint an Advocate Commissioner or whether the evidence already on record is sufficient to decide the issues.

8. With that observation, this Application stands disposed of as being premature.

9. Be that as it may, the plaintiff or the defendants are at liberty to file an Application to appoint an Advocate Commissioner, on conclusion of recording of evidence of both the sides.

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**08.09.2022**



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