



C.R.P(PD)No.2520 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.R.P(NPD).No.2520 of 2017

and

CMP.No.11941 of 2017

1.Selvi @ Selvakumari

2.Palanisamy

..Petitioners

Vs.

Saroja

..Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constituion of India, against the fair and decreetal order dated 21.04.2017 passed in I.A.No.998 of 2016 in O.S.No.178 of 2016 on the file of the District Munsif Court, Pappireddipatti.

For Petitioners : Mr.Vivek for Mr.R.Neelakandan

For Respondent : Mr.Senthil



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ORDER

The plaintiffs in O.S.No.178 of 2016, which is now pending on the file of the District Munsif Court, Pappireddipatti are the petitioners herein.

2.The said suit had been filed seeking declaration of title and for permanent injunction with respect to the suit properties, which was described in the schedule to the plaint. It had been stated that the revision petitioners / plaintiffs had purchased the properties by way of registered documents dated 05.06.1995, 20.01.2009 & 02.05.2011. Thereafter, they had been paying necessary kists and also the taxes as imposed. It had been stated that the respondent / defendant in the suit, is on the Southern side of the suit property. There were earlier proceedings in O.S.No.117 of 2007 and O.S.No.2 of 2008. There was also a Writ Petition filed in W.P.No.13972 of 2016. Claiming declaration of title and also permanent injunction restraining the respondent herein / defendant from interfering with their possession, the suit had been laid.



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3.The respondent had filed a written statement opposing the averments made in the plaint. Thereafter, the petitioners herein filed I.A.No.998 of 2016 under Order 26 Rule 9 of C.P.C., seeking appointment of an Advocate Commissioner. The respondent herein urged that the Court can consider the written statement filed as a counter in the said Interlocutory Application.

4.The learned Judge dismissed the said application concluding that an Advocate Commissioner cannot be appointed for collection of evidence and stated that it is for the petitioners / plaintiffs to establish their case through oral and documentary evidence. Further, it had stated that only when such evidence is recorded, the Court can decide whether they are sufficient to determine the issues raised in the suit.

5.The learned counsel appearing for the revision petitioners took umbrage on such reasoning and also placed reliance on the order of the learned Single Judge of this Court passed in **C.R.P(PD)No.2485 of 2016**



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dated 11.03.2021 in **Ramu and two others Vs. Balaraman**. In the aforementioned order of the learned Single Judge, reliance had been placed on the judgment of the Hon'ble Supreme Court in **Haryana Waqf Board Vs. Shanti Sarup and others** reported in **2008 (8) SCC 671** and on **Tejraj Sarammal Vs. Bajranglal Daman** reported in **CDJ 2004 MHC 947**. In both the aforementioned judgments, the Courts had examined the appointment of a Local Commissioner under Order 26 Rule 9 of C.P.C., and stated that if the Commissioner is required to efficiently clarify the matter or the issues it is only be advisable, the Commissioner is actually appointed by the Court.

6.It has to be kept in mind an Advocate Commissioner is only an extended arm of the Court to assist the Court in coming to a finding on the issue raised. The learned counsel for the revision petitioners also placed reliance on another order of a learned Single Judge of this Court in **C.R.P(PD).No.1751 of 2005 in Kandipalayam Rajavaikkal Siru Vivasayigal Neertru Pasana Sangam Vs. Nanjay Edayar Vivasaiyigal Sangam** wherein, the issue of appointment of a Commissioner under Order



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26 Rule 9 of C.P.C., came up for consideration and the learned Single Judge of this Court, had affirmed the appointment of Advocate Commissioner, which in that particular case was found to be essential.

7.I am informed that the trial has to be commenced. Let the revision petitioners / plaintiffs commence evidence. Let that evidence be tested during the course of trial thereafter, let the respondent / defendant adduce evidence. The learned District Munsif, Pappireddipatti should keep in mind the issues framed in the suit. This would necessitate a clear understanding of the facts averred and the facts disputed necessitating the framing of a particular issue.

8.If the evidence adduced by the parties are sufficient to determine the issues, the learned District Munsif can proceed further and pronounce a judgment on analysis of the evidence adduced during trial. If it is found that the evidence is not sufficient to come to a just solution then, the learned District Munsif can consider Order 26 Rule 9 of C.P.C, which stipulates that if the Court determines that to adjudicate a particular issue,



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appointment of a Local Commissioner is required, taking into consideration of that particular provision, the learned District Munsif, Pappireddipatti, on its own motion, can appoint a Commissioner and also issue necessary warrant to be executed by the Advocate Commissioner. This situation will arise only on conclusion of evidence by both the sides and can always be resorted by the learned District Munsif.

9. With the above observations, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

28.02.2022

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Index: Yes/No

Internet: Yes/No

Speaking/Non-speaking order



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To:-

The District Munsif Court,
Pappireddipatti.



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C.V.KARTHIKEYAN, J.

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