



CRP PD(MD)No.1509 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 16.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP PD(MD) No.1509 of 2022 and
CMP(MD) No.6333 of 2022

1.T.Kannan
2.K.Umarani
3.T.Raghavan

... Petitioners

Vs

1.Rajesh Kanna
2.V.Saravanan

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 15.03.2022 passed in I.A.No.1 of 2021 in O.S.No.29 of 2021 on the file of the Sub Court, Sivakasi, by allowing this Civil Revision Petition with costs.

For Petitioners : Mr.A.Sivaji

For Respondents : Mr.H.Arumugam for
Mr.M.Thirunavukkararasu



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ORDER

This Civil Revision Petition is filed as against the order passed by the learned Subordinate Judge, Sivakasi in I.A.No.1 of 2021 in O.S.No.29 of 2021, dated 15.03.2022.

2.The respondents/plaintiffs filed a suit in O.S.No.29 of 2021 before the Subordinate Court, Sivakasi as against the petitioners/defendants for the relief of declaration, recovery of possession and for mandatory injunction to remove the encroachments. Pending the suit, the respondents/plaintiffs have also filed an application in I.A.No.1 of 2021, under Order 26 Rule 9 of Civil Procedure Code, for appointment of Advocate Commissioner to inspect and measure both the plaint 1st and 2nd schedule properties with the help of Surveyor. The trial Court allowed the said application. Aggrieved over the same, the petitioners/defendants filed the present Civil Revision Petition.



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3.The learned counsel appearing for the petitioners/defendants submits that the defendants are in possession of the suit schedule properties by virtue of an assignment order issued by the Government of the year 2016. It is also pleaded by the petitioners' counsel that the plaintiffs filed an appeal before the Revenue authority as against the assignment order in the year 2018 and without prosecuting the appeal, the plaintiffs filed the present suit as well as the interlocutory application for appointment of Advocate Commissioner. The learned counsel further submits that the above application has been filed by the plaintiffs only for the purpose of collecting evidence and hence the order of the trial Court is liable to be set aside. The learned counsel has relied upon the Judgment of this Court in the case of ***K.M.A. Wahab and five others Vs Eswaran and another***, reported in ***2008 (3) CTC 597***, wherein it was held as follows:-

3.Pointing out the said statement, learned counsel for the petitioner argued that there is no dispute regarding identity of the suit property and for proving possession



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the respondent cannot seek for appointment of the Advocate Commissioner...

3.15. In as much as there is no dispute with regard to the identify of the property, the trial Court has rightly refused to appoint Advocate Commissioner in I.A.No. 370 of 2004, filed by the second defendant and therefore, the said order is liable to be confirmed....

3.18. Advocate Commissioner could be appointed only wehnt he Court is satisfied that on the material available on record, the party is not able to produce the desired evidence, the Court may assist the party to appoint the Advocate Commissioner to obtain the evidence...

3. ...Power is conferred on the Court to appoint Commissioner to make local inspection not to collect evidence, but only to obtain evidence, which is a peculiar nature which could be obtained only on spot inspection. Possession of the defendants in S.No.8/1 could be well proved by adducing appropriate evidence. In that view of the matter also, the order of the lower Court declining to appoint Advocate Commissioner is to be confirmed.



6....As far as the factum of possession is concerned, the Court alone gather evidence through the parties and it cannot entrust the said matter to the Advocate Commissioner to collect the evidence. As held in the Judgment reported in Jabeen Taj Vs.M.Parveen Banum 2005 (3) MLJ 24, inasmuch as there is no dispute with regard to the identity of the property, the trial Court has no reason to appoint the Advocate-Commissioner. Similarly, in the other judgment reported in Chandrasekaran and 6 others Vs.V.Doss Naidu, 2006 (2) LW 159, it is held that though remuneration is paid by the party, who sought for appointment of the Advocate Commissioner, as such no prejudice will be caused to the other side, is not at all relevant factor for appointment of Advocate Commissioner.

4.The learned counsel appearing for the respondents/plaintiffs submits that the suit is filed for declaration and also for mandatory injunction. The plaintiffs have taken a specific plea



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that the respondents have encroached and put up certain constructions in the suit schedule property. The Revenue authority issued patta in favour of the defendants with regard to the plaint first schedule property, which belongs to the plaintiffs, and without any notice to the plaintiffs. Hence, the plaintiffs filed an appeal through their Power of Attorney B.Selvaraj before the Revenue Divisional Officer, Sattur, on 12.02.2018 for cancellation of the patta, granted in favour of the defendants and the same is pending. In fact, the Revenue authorities have suggested the plaintiffs to approach the civil court and hence, they filed the present suit along with an application for appointment of Advocate Commissioner. The trial Court has rightly allowed the same and there is no need to interfere with the order of the trial Court. In order to substantiate his contention, the learned counsel relied upon the Judgment of this Court in M.Ali Babu (Died) and others Vs Selvam Thaul Metha (Died) and others, in CRP(PD)(MD) No.782 of 2012 dated 02.01.2013, wherein, it was held as follows:-



....The whys and wherefores are that once an Advocate Commissioner visits and measures the suit property with the help of a surveyor with reference to the survey map, it would be glaringly, pellucidly and palpably clear as to whether such a house is situated within the suit property or not and that would help the Court to render a judgment by putting the facts and reasons on an even keel. I would like to recall the adage "A picture is worth thousand words". Instead of both the sides prolonging the trial by adducing oral evidence on an enormous scale, the appointment of an Advocate Commissioner to visit the suit property and measure it and note down the physical features, would solve the entire problem in this case.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The respondents/plaintiffs filed a suit in O.S.No.29 of 2021 before the Subordinate Court, Sivakasi as against the



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petitioners/defendants for the relief of declaration, recovery of possession and for mandatory injunction and they have also filed an application, under Order 26 Rule 9 of Civil Procedure Code, for appointment of Advocate Commissioner and the same was allowed by the trial Court. The said order is under challenge in this Civil Revision Petition on the ground that the above application has been filed by the plaintiffs only for collecting evidence that the suit schedule properties are vested with them through an assignment order issued by the Government. The trial Court has felt that the Commissioner's Report may help him in deciding the issue and therefore, this Court is not inclined to interfere with the order of the trial Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes / No

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To

The Sub Court, Sivakasi



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B.PUGALENDHI, J.

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