



C.R.P.No.4103 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.4103 of 2022

and

C.M.P.No.21306 of 2022

P.Rajendran

... Petitioner

Vs.

P.Selvanithi

... Respondent

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 14.09.2022 made in I.A.No.4 of 2022 in I.A.No.6 of 2020 in O.S.No.387 of 2020 passed by the Hon'ble III Additional District Munsiff, Salem.

For Petitioner : Mr.T.S.Vijaya Raghavan

For Respondent : Mr.R.Nalliyappan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 14.09.2022 passed in I.A.No.4 of 2022 in I.A.No.6 of 2020 in O.S.No.387 of 2020.



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2. The revision petitioner is the plaintiff, instituted a suit for injunction and during the pendency of the suit, the revision petitioner filed I.A.No.6 of 2020 for appointment of an Advocate Commissioner. The Trial Court appointed an Advocate Commissioner under Order XXVI Rule 10(3) and said Advocate Commissioner inspected the subject property and submitted his report. Since the report was ambiguous the respondent / defendant filed I.A.No.4 of 2022 to scrap the Advocate Commissioner's report and appoint a new Advocate Commissioner. The Trial Court adjudicated the issues and made a finding that the Commissioner has measured the said property based on certain documents and the report of the Commissioner, with reference to the measurement, is totally vague and ambiguous and the report does not contain any particulars as to whether the boundary stones were fixed before starting the measurements. Since the Trial Court found the report of the Advocate Commissioner was vague and ambiguous, appointed another Advocate Commissioner to measure the subject property. Thus, the revision petitioner is constrained to move the present revision petition.



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3. Learned counsel for the revision petitioner mainly contended that there is no ambiguity or vagueness in the report and therefore, the trial Court ought to have proceeded based on the Commissioner's report already submitted. Appointment of second Advocate Commissioner would cause prejudice to the revision petitioner and thus, the order passed in the interlocutory application is liable to be set aside.

4. Learned counsel appearing for the respondent raised an objection by stating that the Trial Court appointed an Advocate Commissioner framing these issues and directed the Commissioner to conduct measurements with reference to the points noted down in the order and accordingly to submit a report. However, the Trial Court found that the report submitted by the Advocate Commissioner is totally vague and ambiguous and the report does not contain any particulars as to whether the boundary stones were fixed before starting the measurements. In the absence of those particulars, the Court thought fit that the Commissioner's report is of no assistance for the purpose of crystallising the rights between the parties, accordingly, appointed another Advocate Commissioner and



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thus, the civil revision petition is to be dismissed.

5. This Court is of the considered opinion that the suit was instituted by the revision petitioner for injunction. In a suit for injunction, the plaintiff has to establish his case independently by producing documents and evidences. No party to the suit can be allowed to collect the evidences by appointing an Advocate Commissioner under Order XXVI Rule 10(3). If at all any doubt arises in the mind of the Court and the Court forms an opinion that the appointment of Advocate Commissioner is warranted for the purpose of deciding issues, then alone, an Advocate Commissioner is to be appointed and not otherwise.

6. For the purpose of collecting further evidences, no Commissioner is to be appointed, which would cause prejudice to either of the parties. The parties approaching the Court is expected to establish their respective cases through documents and evidences. In the present case, the suit was instituted for grant of injunction and thus, the plaintiff has to establish his case through documents. However, the plaintiff himself filed



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an application for appointment of an Advocate Commissioner and the Trial Court appointment a Commissioner. The Commissioner submitted his report, which is found to be vague and ambiguous. Thus, the Trial Court again appointed another Advocate Commissioner.

7. The practice of appointing Advocate Commissioner one after another is not desirable and the parties are bound to establish their cases through documents and evidences during the course of adjudication. If at all there is any serious doubt in the mind of the Court, then alone a Commissioner is to be appointed and in the present case, the interlocutory application to appoint an Advocate Commissioner was filed during the pendency of the suit and before framing issues and thus, this Court is of the opinion that appointing of an Advocate Commissioner itself is unnecessary and the parties to the suit are at liberty to establish their respective cases through documents and evidences.

8. In view of the facts and circumstances, this Court is of the opinion that the Trial Court has committed error in appointing second



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Advocate Commissioner, which is unnecessary and accordingly, the fair and decretal order dated 14.09.2022 in I.A.No.4 of 2022 in I.A.No.6 of 2020 in O.S.No.387 of 2020 is set aside. The trial Court is directed to proceed with the suit based on the documents and evidences produced by the respective parties and dispose of the same on merits and in accordance with law.

9. It is made clear that the report of the Advocate Commissioner, already submitted, cannot be relied upon by either of the parties or by the Court for the purpose of deciding the issues involved in the suit.

10. Accordingly, this writ petition is disposed of. There shall be no order as to costs.

Rap/drm

06.01.2023

Index: Yes
Internet: Yes
Speaking Order

To
1. III Additional District Munsiff, Salem.



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S.M.SUBRAMANIAM.J.,

rap/drm

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