



C.R.P.No.77 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2023

CORAM

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM**

C.R.P.No.77 of 2023

and

C.M.P.No.575 of 2023

Aruchamy

...

Petitioner

Vs

Ramamoorthy

...

Respondent

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India to set aside the fair and final order passed in I.A.No.2 of 2022 in O.S.No.1026 of 2022 on the file of the District Munsif Court, Coimbatore, dated 22.11.2022 by allowing the Civil Revision Petition.

For Petitioners : Mr.B.Kumarasamy



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## ORDER

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The Civil Revision Petition is filed to set aside the fair and final order passed in I.A.No.2 of 2022 in O.S.No.1026 of 2022.

2. In a suit for mandatory injunction, parties cannot be resorted to appoint an Advocate Commissioner in a routine manner. The Advocate Commissioner is to be appointed if there is any doubt in the mind of the Court regarding the factual dispute between the parties. An application filed by either of the parties to appoint an Advocate Commissioner cannot be considered for the purpose of collecting evidence or establishing their case. Courts are expected to be cautious while appointing an Advocate Commissioner since the practice of collecting evidence and establishing the case is being developed at many circumstances by either of the parties in a suit.



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3. A person instituting a suit has to establish his case through documents and evidence. Appointment of an Advocate Commissioner is to be made exceptionally when there is genuine doubt in the mind of the Court to form a final opinion regarding the dispute between the parties. The term under order 26 rule 9 of CPC “*elucidating any matter in dispute*” means that an Advocate Commissioner shall be appointed only to eradicate the doubt being arisen in the mind of the Court and not in the mind of the parties to the suit. Parties to the suit may have several doubts or they may take undue advantage for the purpose of collection of evidence or to establish their own case. The Court cannot aid the parties filing such petitions with an idea to establish their case.

4. In the present case, the suit was instituted for mandatory injunction and permanent injunction and the plaintiff has to establish his case independently. In the present case, the Advocate Commissioner was already appointed and the Court has directed the Advocate Commissioner to measure the scheduled property based on the past documents.



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5. This Court is of the considered opinion that the Court cannot restrict the scope of the inspection with reference to the old documents or new documents. While conducting an inspection of the property, the Advocate Commissioner, if appointed, has to inspect the property as a whole and submit his report for the benefit of the Court to understand the issues. If one set of document alone is considered, then the other party raises objection that the current document is to be considered. This exactly is the reason why the Courts have repeatedly held that the Advocate Commissioner need not be appointed in such circumstances for the examination of one set of documents by omitting the other set of documents which are also to be relied on by the parties.

6. The purpose for which an Advocate Commissioner has been appointed in the present case does not seem to be based on any sound reason. The Court appointed the Advocate Commissioner to measure the scheduled property with the past documents. In the event of allowing the commissioner



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to conduct measurement based on the past documents, the question arises if there is any discrepancy in respect of the current documents. In view of such discrepancies, either of the parties may be prejudiced in the event of allowing the commissioner to measure the property only based on past documents. Therefore, this Court is of an opinion that the appointment of an Advocate Commissioner itself became unnecessary with reference to the suit for mandatory injunction and permanent injunction filed in this case and the parties are expected to establish their respective cases based on the documents and evidence.

7. Since this Court is of an opinion that the Trial Court has unnecessarily appointed an Advocate Commissioner which caused prejudice to the revision petitioner and would create further confusion while deciding the issues between the parties, this Court is inclined to set aside the order dated 23.09.2022 appointing an Advocate Commissioner to measure the suit schedule property. Accordingly, the order passed in I.A. No.2 of 2022, in OS No.1026 of 2022, dated 22.11.2022, is set aside and the Trial Court is



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expected to adjudicate the issues on merits based on the documents and evidence produced between the parties and dispose of the suit.

8. Accordingly, the civil revision petition stands **allowed**. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

sha

11.01.2023

Speaking Order

Internet : Yes

Index: Yes

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District Munsif Court, Coimbatore.



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**S.M.SUBRAMANIAM, J.**

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