



C.R.P.(MD).No.17 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	31.07.2023
Pronounced on	06.12.2023

CORAM

THE HON'BLE MRS. JUSTICE K.GOVINDARAJAN THILAKAVADI

C.R.P.(MD) No.17 of 2022
and
C.M.P.(MD) No.124 of 2022

Aravindhnan

...Petitioner

Versus

1.Loouin

2.Symon

... Respondents

Prayer: The Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order in I.A.No.19 of 2020 in O.S.No. 10 of 2020 dated 06.09.2021 in the court of the District Munsif Court, Ramanathapuram, Ramanathapuram District.

For Petitioner : Mr.S.A.Ajmal Khan

For Respondents :

For R1 : Mr.J.Barathan

For R2 : No Appearance



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ORDER

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This Civil Revision Petition is preferred against the order in I.A.No.19 of 2020 in O.S.No.10 of 2020 dated 06.09.2021 on the file of the District Munsif Court, Ramanathapuram.

2. The revision petitioner as plaintiff has filed the above suit in O.S.No.10 of 2020 for seeking the relief of declaration of title, recovery of possession and mandatory injunction.

3. In the plaint, it was clearly stated that the suit property was encroached by the respondents/defendants. The revision petitioner would submit that the nature of the dispute could be resolved, only if the exact location of the property is identified by an Advocate Commissioner. Hence, revision petitioner/plaintiff filed an application in I.A.No.19 of 2020 for appointment of an Advocate Commissioner, to inspect the suit property and to file his report. However, the trial Court dismissed the application by stating that the Advocate Commissioner cannot be appointed to collect evidence to find out the factum of possession. It is submitted that in the suit



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for declaration, recovery of possession and mandatory injunction, the appointment of an Advocate Commissioner is essential to prove how the property was encroached by the respondents. Hence, the order passed by the trial Court is liable to be set aside.

4. The learned counsel appearing for the revision petitioner submits that noting down the physical features and other things would not amount to culling out the evidence. He would further submit that no prejudice will be caused to other side in such appointment of Advocate Commissioner.

5. To support his contention, he relied upon the decision of this Court in *Maruthai Nattar Vs. Ayyavu* [2018 (5) MLJ 447].

6. On the other hand, the learned counsel appearing for the respondents would contend that the details required by the petitioner would be gone into only at the time of trial on the basis of evidence and he would further contend that the Advocate Commissioner cannot be appointed for collecting evidence to establish the possession of the parties. Therefore, the trial Court has rightly dismissed the application which calls for no



interference.

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7. Heard learned counsel on both sides and perused the materials on record.

8. It is settled position that an Advocate Commissioner cannot be appointed to collect evidence and the parties have to establish their case, only by oral and documentary evidence. In the case on hand, the suit has been filed by the revision petitioner/plaintiff for declaration of title, recovery of possession and mandatory injunction. So far the declaration of title is concerned, the plaintiff has to establish his case with regard to his title by adducing oral and documentary evidence. But in this case, the plaintiff had also sought for relief of recovery of possession and mandatory injunction. The specific case of the plaintiff is that the defendants have encroached the property of the plaintiff. When the defendants specifically denied that there is no encroachment, the nature of dispute could be resolved only if the exact location and measurement of the property is done. This can be done only by appointing an Advocate Commissioner.

9. Therefore, in my considered view, no prejudice will be caused to the respondents herein, by appointing the Advocate Commissioner to visit



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the suit property along with Surveyor and note down the physical features.

In fact, the Advocate Commissioner report and plan would enable the Court for the purpose of throwing more light or enlighten to arrive at a fair decision. Thus appointment of Advocate Commissioner is necessary and therefore the order of Court below is liable to be set aside.

10. In the result, the Civil Revision Petition is allowed and order passed by the trial Court in I.A.No.19 of 2020 dated 06.09.2021 is set aside. The learned District Munsif, Ramanathapuram is directed to appoint an Advocate Commissioner within a period of two weeks from the receipt of a copy of this order and ascertain the actual possession, note down the physical features of the suit property, etc., along with Surveyor with a direction to the Advocate Commissioner to file a report within a period of one month from the date of such appointment. On filing the report by the Advocate Commissioner, the learned District Munsif, Ramanathapuram is directed to dispose of the suit within a period of three months thereafter. No Costs. Consequently, connected miscellaneous petition is closed.

06.12.2023



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Index: Yes/No

Speaking Order : Yes/No

To

The District Munsif Court, Ramanathapuram.



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K.GOVINDARAJAN THILAKAVADI,J.

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Pre-Delivery order made in

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and

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06.12.2023