



C.R.P(MD).No.863 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P(MD).No.863 of 2023

Sujatha

... Petitioner/Petitioner/plaintiff

Vs.

1.The State of Tamil Nadu,
rep., by the District Collector,
Kanniyakumari District,
Office at Nagercoil,
Nagercoil Town, Agassteswaram Taluk,
Kanyakumari District.

2.The District Revenue Officer,
Kanyakumari District,
Office at Nagercoil,
Nagercoil Town, ArudesomGramam,
Agassteswaram Taluk,
Kanyakumari District.

3.The Tahsildar,
Vilavancode Taluk,
Office at Kuzhithurai and Post,
Kuzhithurai Village, Vilavancode Taluk,
Kanyakumari District.

4.The Village Administrative Officer,
Mancode Village,
Office at Ampalakalai,
Mancode Village,
Vilavancode Taluk,
Kanyakumari District.

... Respondents/Respondents/Defendants



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PRAAYER:- This Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 10.01.2023 in I.A.No.2 of 2023 in O.S.No.123 of 2021 on the file of the Principal District Munsif Court, Kuzhithurai, Kanyakumari.

For petitioner : Mr.D.Christenson Jugunu
For Respondents : Mr.G.Sivaraja
Government Advocate

ORDER

The petitioner is the plaintiff before the Principal District Munsif Court, Kuzhithurai, Kanyakumari District, in O.S.No.123 of 2021. The suit has been filed by the petitioner for declaration that the petitioner is the owner of the suit schedule property by virtue of adverse possession in the said suit. The petitioner filed I.A.No.2 of 2021 under Order 26 Rule 9 of Code of Civil Procedure r/w 151 of Code of Civil Procedure to appoint an Advocate Commissioner. Vide impugned order, the learned Principal District Munsif has rejected the application filed by the petitioner, after referring to few decisions of this Court. The relevant paragraph of the impugned order reads as follows:

“

7.At this juncture, the ruling of our Hon'ble High Court in C.R.P.PD(MD).No.970 of 2012, is relevant and is as follows:

“9.It is clear from the above judgment that power to appoint a Commissioner for local investigation cannot be exercised by the Court to assist the party to collect



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evidence. It is also clear from the above judgment that in a suit for permanent injunction, if the report of the Advocate Commissioner, would indirectly amount to finding out the possession of the property, such a commission should never be appointed.

10.This Court is aware of the fact that even in a suit for bare injunction, an Advocate Commissioner can be appointed. It is not a complete bar for a Court to appoint an Advocate Commissioner in a suit for bare injunction. However, such an appointment must be only in cases where it is necessary for localising the property, when there is a dispute regarding boundaries or there is an attempt made to alter the physical features of the property etc. In a suit for bare injunction, the Courts are normally reluctant to appoint a Commissioner for noting down the physical feature of the property, since in most of the cases, it will amount to collecting evidence in favour of one of the parties.

8.From the above ruling, it is Limelight that appointment of Advocate Commissioner cannot be exercised by the Court to assess the party to collect evidence. In our concerned case, as per the reason stated in the affidavit, it is crystal clear that, onlly to note down the physical features improvements and trees in this suit property. While this being so, appointment of Advocate Commissioner to note down the physical features can be viewed only to collect evidence through Advocate Commissioner. So, as per above ruling, this petition cannot be encouraged. Accordingly, this petition lacks merits and deserved to be dismissed.

In result, this petition is dismissed without costs. “



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2. Although not properly explained the fact remains that the petitioner is attempting to protect the title over the property by virtue of alleged adverse possession. It is for the petitioner to let in evidence both oral and documentary to establish his right over the suit schedule property by way of adverse possession. The petitioner can not expect the Court to aid the petitioner to collect evidence by appointing an Advocate Commissioner. I do not find any merits in the present civil revision petition. As such, the impugned order passed by the learned Principal District Munsif, Kuzhithurai, Kanyakumari, in I.A.No.2 of 2021 in O.S.No.123 of 2021 does not call for any interference. Accordingly, the Civil Revision Petition stands dismissed. However, the trial Court is directed to dispose of the suit in O.S.No.123 of 2021 as expeditiously as possible, preferably within a period of twelve(12) months from the date of receipt of a copy of this order. No costs.

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NCC : Yes/No
Index : Yes/No
Rmk



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To

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- 4.The Village Administrative Officer,
Mancode Village,
Office at Ampalakalai,
Mancode Village,
Vilavancode Taluk,
Kanyakumari District.
- 5.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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C.SARAVANAN,J.

Rmk

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