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CRP (MD) No.861 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.08.2023
Pronounced on	07.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.861 of 2023
and
CMP(MD)No.3928 of 2023

Muniyammal

... Petitioner

Vs.

1.Mani

2.The Tahsildar,
Palani, Dindigul District.

3.The District Collector,
Dindigul District.

... Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order passed in I.A.No.3 of 2022 in O.S.No.26 of 2022 on the file of the District Munsif Court, Palani, dated 11.01.2023.

For Petitioner : Mr.D.Venkatesh

For R1 : Mr.T.Lenin Kumar

For R2 & R3 : Mr.G.Suriyananth
Additional Government Pleader



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ORDER

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This civil revision petition is preferred by the petitioner/plaintiff against the order passed in I.A.No.3 of 2022 in O.S.No.26 of 2022, dated 11.01.2023, on the file of the District Munsif Court, Palani.

2. The above suit in O.S.No.26 of 2022 was filed by the petitioner/plaintiff for declaration of title and also for permanent injunction. During the pendency of the suit, the petitioner filed an application in I.A.No3 of 2022 for appointment of an Advocate Commissioner. The above petition was resisted on the side of the respondents/defendants. The trial Court, considering the averments made in the petition and in the counter affidavit, dismissed the above application for appointment of Advocate Commissioner by stating that the suit is filed only for declaration of title and permanent injunction and there is no dispute with regard to the boundaries and identification of the suit property. Therefore, the report and plan of Advocate Commissioner is not necessary for adjudicating the issue in dispute. Aggrieved by this, the present civil revision petition is filed.



3. The learned counsel appearing for the revision petitioner would submit that as per the pleadings of the petitioner, the land possessed by her in Survey No.570 with an extent of 50 cents, do not form part of the land assigned to the first respondent, which is in Survey No.570/3 with an extent of 2 acres. While so, relying upon the assignment order issued by the Government, the first respondent is trying to encroach the property of the petitioner. Therefore, the identity of the suit property is under dispute and as such appointment of Advocate Commissioner is very much necessary. He would further submit that the petitioner has categorically averred in the plaint that there are 25 years old 15 mango trees and 30 years old Tamarind trees in her lands and the first respondent in the written statement has stated that he had planted the trees in his property. Therefore, to resolve the dispute between the parties in the present suit, appointment of Advocate Commissioner is necessitated and the trial Court without considering the above facts erroneously dismissed the application for appointment of Advocate Commissioner filed by the petitioner. The learned counsel would further submit that though it is a settled position of law that an Advocate Commissioner cannot be appointed for the purpose of proving possession,



when a local inspection done by the Advocate Commissioner, it would throw light on the dispute between the parties and also assist in minimizing oral evidence in the case. He would further submit that since the first respondent attempted to trespass the property of the petitioner/plaintiff, a local investigation by the Advocate Commissioner is required for the purpose of elucidating the matter in dispute. To support his contention, he has relied upon the decision cases, rendered in CRP(MD) No.65 of 2014 and CRP(MD) No.1358 of 2017.

4. On the other hand, the learned counsel for the first respondent would submit that an Advocate Commissioner cannot be appointed to gather the evidence to prove the case of the revision petitioner in respect of the property, which is not the subject matter of the suit. To support his contention, he has relied upon the decisions reported in ***CDJ 2006 MHC 1911 and CDJ 2005 MHC 1137***.

5. Heard the learned counsel appearing on either side.



6. The revision petitioner has sought for appointment of an Advocate Commissioner in I.A.No.3 of 2022 to inspect the suit property and to note down its physical features and also to measure the property with the help of Village Administrative Officer and Surveyor and file his report and plan. In the petition averments, she had stated that the suit property is a Government poromboke land, in which the petitioner/plaintiff has planted 15 mango trees aged about 25 years and Tamarind trees aged about 30 years and the suit property is in possession and enjoyment of the petitioner/plaintiff for many years. She had approached the second defendant for issuance of patta on several dates. However, no action was taken by the second defendant in this regard. Therefore, she was constrained to file the above suit to establish her possession in the suit property and to note down the existence of the trees planted by her. Therefore, it is necessary to appoint an Advocate Commissioner to note down the physical features in the suit property.

7. The report of the Advocate Commissioner in this regard can never be the basis for deciding the suit for the reason that the Commissioner cannot be appointed to gather evidence to prove the case of the parties. As rightly



pointed out by this Court in CRP(MD) No.579 of 2005, parties should prove their case by themselves by letting in legally acceptable evidence and the report of the Commissioner can only aid the Court in evaluating the evidence to come to a just conclusion. But, in this case, appointment of Advocate Commissioner was sought for to gather the evidence to prove case of the petitioner/plaintiff. The possession of the petitioner/plaintiff in the suit property has to be established only by adducing oral and documentary evidence during the trial of the suit and Advocate Commissioner cannot be appointed for the purpose of proving possession as held in the judgment reported in ***CDJ 2006 MHC 1911 and CDJ 2005 MHC 1137***. The facts and circumstances of the cases cited by the learned counsel for the petitioner is not applicable to the facts and circumstances of the present case for the reason that the Advocate Commissioner cannot ascertain the age of the trees and also his report cannot prove the possession. It would not throw light on the dispute between the parties. Therefore, the trial Court is right in dismissing the application, which calls for no interference.



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8. In the result, this Civil Revision Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

07.09.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

cp

To

1.The District Munsif,
Palani.

2.The Tahsildar,
Palani, Dindigul District.

3.The District Collector,
Dindigul District.



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K.GOVINDARAJAN THILAKAVADI

cp

Pre-delivery order made in
CRP (MD) No.861 of 2023

07.09.2023