



WEB COPY



C.R.P(PD)(MD).No.26 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.04.2023

Pronounced on : 19.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.26 of 2019

and

C.M.P(MD)No.131 of 2019

Ramar

...Petitioner/Plaintiff

Vs.

Ramesh @ Santhosh (Died)

1.Saraavathi

2.Vanaraja

3.Chandran

4.Sathish

5.Sakthi

6.Sathya

7.Minor Mithresh

... Respondents/Defendants 2 to 7

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 30.10.2018 passed in I.A.No.273 of 2018 in O.S.No.5 of 2015 on the file of the District Munsif -cum-Judicial Magistrate No.1, Usilampatti.

For Petitioner : Mr.N.Vallinayagam

For R1, R3 to R6 : Mr.J.Senthilkumaraiah

For R2 : Mr.C.Jeganathan
for M/s.Veera Associates



ORDER

WEB COPY

This Civil Revision Petition is filed against the order dated 30.10.2018 passed in I.A.No.273 of 2018 in O.S.No.5 of 2015 on the file of the District Munsif-cum-Judicial Magistrate No.1 Court, Usilampatti.

2. The brief facts of the case:

The revision petitioner is the plaintiff in O.S.No.5 of 2015 on the file of the District Munsif-cum-Judicial Magistrate No.1 Court, Usilampatti. He filed the suit against the defendants for declaration and consequential permanent injunction. The respondents, who are the defendants therein, have filed a detailed written statement denying the averments. Pending suit, the revision petitioner/plaintiff has filed a petition in I.A.No.273 of 2018 in O.S.No.5 of 2015 for appointment of Advocate/Commissioner to visit the suit properties and to file a report. The defendants have objected the petition by filing a counter. After hearing both, the Trial Court has dismissed the petition in I.A.No.273 of 2018 in O.S.No.5 of 2015 on 30.10.2018. Aggrieved by the order of the Trial Court, the revision petitioner/plaintiff moved this Court by way of this Civil Revision Petition.



WEB COPY



3. Heard both side and perused the records in this Civil Revision Petition.

4. The learned counsel appearing for the revision petitioner argued that the revision petitioner has filed the main suit in O.S.No.5 of 2015 against the respondents/defendants for declaration that the suit properties belonged to him and for consequential injunction. During pendency of the suit, the petitioner states that the respondents/defendants are trying to encroach the suit property and so, the revision petitioner sought for appointment of Advocate Commissioner to note down the physical features of the suit property. But, the Trial Court has dismissed the petition without assigning any valid reason. The revision petitioner has not filed the petition for collecting evidence and even in a suit for bare injunction, a Commissioner appointment can be made. The report of the Commissioner would assist the Court to come to fair decision while considering the evidence at the time of trial. Mere appointment of Commissioner would not prejudice the other party. Therefore, the impugned order has to be set aside and the revision petition may be allowed. In support of his argument, the learned counsel for the petitioner relied on the following decisions:



(1) (2008) 6 MLJ 359 (A.Sulthan and Anr. Vs. Mohammed Dasthagir), wherein it is held as follows:

“Even in a suit for bare injunction, an Advocate Commissioner can be appointed to make local investigation. Such local investigation would facilitate the Court to decide the issue more effectively rather than shutting out the remedy and driving the parties to initiate fresh legal proceedings.”

(2) 2017 (2) CTC 353 (Shanmugathai Vs. Kamalammal and Anr.), wherein it is held in paragraph No.12 as follows:

"12.the Advocate Commissioner if appointed would be able to visit the suit property with the help of a Surveyor, measure the same and locate it and also note down as to what are all in existence in the suit property. Nothing down the physical features would not amount to culling out the evidence..."

5. Per contra, the learned counsel for the respondents vehemently argued that the revision petitioner has filed the main suit seeking the relief of declaration and permanent injunction in respect of the suit properties. The revision petitioner has not claimed that his properties are situated in the properties of the respondents. Further, the



respondents/defendants contended that the suit property belonged to them. They have not tried to encroach upon the suit property. If so, the Commissioner appointment is not necessary and only to collect evidence the petitioner has filed the petition. Since the main suit is for declaration and injunction, the revision petitioner has to establish his case by producing acceptable title deeds. Considering all these aspects, the Trial Court has dismissed the petition, which warrants no interference by this Court. Hence, the revision petitioner has no valid case in this Civil Revision Petition and the same may be dismissed. In support of his argument, the learned counsel for the respondents has relied on the following citations:

(1) 2006 (5) CTC 178 (T.K.Krishnamurthy Vs. Tamil Nadu Water and Drainage Board rep. by its Senior Engineer RWS Division), wherein it is held in paragraph No.9 as follows:

“9. The report of the Advocate Commissioner alone can never be the basis for deciding the suit as commissioner should not be appointed to gather evidence to prove the case of the parties. 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 Advocate Commissioner was sought for and appointed to gather the evidence to disprove the case of the revision petitioner in respect of a property



which is not subject matter of the suit.”

WEB COPY

(2) 2008 (3) CTC 597 (K.M.A.Wahab and 5 Ors. Vs. Eswaran

and Anr.), wherein it is held in paragraph No.6 as follows:

“6.As far as the factum of possession is concerned, the Court alone gather evidence through the parties and it cannot entrust the said matter to the Advocate Commissioner to collect the evidence. As held in the judgment reported in Jabeen Taj v. M.Parveen Banu, 2005 (3) MLJ 24, inasmuch as there is no dispute with regard to the identity of the property, the Trial Court has no reason to appoint the Advocate Commissioner.....”.

6. On hearing both and on perusal of records, it is clear that the revision petitioner has filed the main suit for declaration and permanent injunction in respect of the suit properties. The respondents have filed the written statement contending that the suit properties belonged to them. So, there is a rival claim over the suit properties by both parties. It is clear, both parties claim title over the suit properties. Of course, there is no bar for appointment of Advocate Commissioner even in a bare injunction suit. But, at the same time, in the case of title over the suit property, the parties should prove their case by themselves by letting in legally acceptable evidence. There is nothing wrong in dismissing the



C.R.P(PD)(MD).No.26 of 2019

petition for appointment of Advocate Commissioner by the Trial Court.

Therefore, considering the nature of the relief sought in the suit and rival claim made in the written statement, the Trial Court has correctly dismissed the petition by passing the impugned order in I.A.No.273 of 2018 in O.S.No.5 of 2015, which warrants no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails and the same is liable to be dismissed.

7. In the result, this Civil Revision Petition is dismissed. No costs.
Consequently, connected Miscellaneous Petition is closed.

19.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
vsd

To

- 1.The District Munsif -cum-Judicial Magistrate No.1,
Usilampatti.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(PD)(MD).No.26 of 2019

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(PD)(MD).No.26 of 2019
and
C.M.P(MD)No.131 of 2019

19.07.2023