



WEB COPY



C.R.P(PD)(MD).No.448 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.06.2023

Pronounced on : 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.R.P(PD)(MD).No.448 of 2018

and

C.M.P(MD)No.1971 of 2018

1.Z.857 Thirubuvanam Co-operative House
Construction Society Ltd.,
By its President
Krishnakumar,
Thirubuvanam,
Thiruvidaimarudur Taluk.

2.Z.857 Thirubuvanam Co-operative House
Construction Society Ltd.,
By its Society Staff
Kamalakannan,
Thirubuvanam,
Thiruvidaimarudur Taluk.

...Petitioners/Defendants

Vs.

Latha

... Respondent/Plaintiff

PRAYER : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order dated 12.12.2017 made in I.A.No.98 of 2017 in O.S.No.35 of 2017 on the file of the Principal District Munsif, Kumbakonam.



WEB COPY



C.R.P(PD)(MD).No.448 of 2018

For Petitioners : Mr.K.Guhan
For Respondent : Mr.A.Saravanan

ORDER

This Civil Revision Petition is filed against the fair order and decretal order passed in I.A.No.98 of 2017 in O.S.No.35 of 2017 on the file of the District Munsif Court, Kumbakonam.

2. The brief facts of the case:

The revision petitioners are the defendants in O.S.No.35 of 2017 on the file of the District Munsif Court, Kumbakonam. The revision respondent has filed a main suit for bare injunction restraining them from interfering with her peaceful possession of the suit property. The revision respondent has filed a petition in I.A.No.98 of 2017 for appointment of an Advocate/Commissioner to note down the physical features of the suit properties. The revision petitioners/defendants objected the said petition. After hearing both, the Trial Court has allowed the petition in I.A.No.98 of 2017 in O.S.No.35 of 2017. Aggrieved by the order of the Trial Court, the revision petitioners/defendants approached this Court by way of this Civil Revision Petition.



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

4. The learned counsel appearing for the revision petitioners has contended that the respondent/plaintiff is one of the member of the revision petitioners/defendants house construction society. She purchased plot No.210 measuring 1750 sq.ft and the other unsold plots are in possession of the revision petitioners/defendants. But, the respondent/plaintiff has filed the suit mentioning the properties of the revision petitioners/defendants without producing any title deed. Being a member of the society, the respondent/plaintiff cannot file a suit against the society. The suit is only for bare injunction. The respondent/plaintiff has filed the petition for appointment of Commissioner to note down the physical features, which indirectly sought to find out the factum of possession of the property. The possession of property has to be adjudicated only by oral and documentary evidence and not by way of Commissioner's report. The dispute of determining the possession could not be left to the Advocate Commissioner and the appointment of Commissioner for making enquiry about the factum of possession of the property in dispute is improper as the same has to be adjudicated on framing issues. Hence, the petition for appointment of Commissioner is



not maintainable. The Trial Court without considering the facts of the case, has passed erroneous order appointing an Advocate/Commissioner and the same is liable to be set aside and the revision petition may be allowed. In support of his argument, the learned counsel for the revision petitioners has relied on the following citations:

(1) 2006 - 2 Law Weekly 159 (Chandrasekaran & 6 Others Vs.

V.Doss Naidu, wherein it is held in paragraph No.17 as follows:

“17.That material issue of determining the possession cannot be left to the Advocate/Commissioner. The appointment of Advocate Commissioner for making enquiry about the factum of possession of the property in dispute is improper since the same has to be adjudicated upon framing issues and recording evidence.”

(2) 2006 (5) CTC 494 (Chinnathambi and Others Vs. Anjalai),

wherein it is held in paragraph No.9 as follows:

“9. It is a well accepted principle of law that an Advocate Commissioner should not be appointed to find out the possession of the property, which has to be adjudicated only by oral and documentary evidence.....”.

(3) (2006) 4 MLJ 626 (T.K.Krishnamurthy Vs. Tamil Nadu

Water and Drainage Board rep. by its Senior Engineer, RWS



Division, Ootacamund and Anr), 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.”

5. Per contra, the learned counsel for the respondent vehemently opposed by placing argument that the revision petitioners have stated in their counter stating without assistance of Taluk Surveyor and Village Administrative Officer, the Advocate/Commissioner could not bring the correct extent. The Trial Court has also considered both side arguments and appointed an Advocate/Commissioner to note down the physical features with the help of qualified Surveyor and Village Administrative Officer on the basis of village accounts and registered deeds. So, there is nothing wrong in it. There is no bar in filing the commission petition in bare injunction suit for disclosing the identification and location of the suit properties. The relevant provisions of the Civil Procedure Code empower the Court to make an order for detention, preservation or



WEB COPY

inspection of any property, which is the subject matter of the suit if the Court feels that such action is necessary or expedient for the purpose of obtaining full information or evidence. When there is controversy as to the identification, location or measurement of the land or premises or object, local investigation by Advocate Commissioner, under Order 26 Rule 9 of the Civil Procedure Code, should be done at early stage so that the parties are aware of the report of the Commissioner and would go to trial prepared. Moreover, the respondent has filed the commission petition along with the plaint at the time of filing. The appointment of Advocate/Commissioner will not cause any prejudice to the revision petitioners/defendants, as the Commissioner was directed to note down the physical features with the help of Surveyor and Village Administrative Officer as stated in the counter. In support of his argument, the learned counsel for the respondent placed reliance on the following rulings:

1. AIR 1988 Orissa 248 (Mahendranath Parida /v/ Purnananda and Ors.), wherein it is held in paragraph No.4 as follows:

“4. O.26, R.9 of the Civil Procedure Code reads as under:-

R.9. Commission to make local investigation - In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any



matter in dispute.....Where the controversy between the parties is the area of the land or identification or location of an object or the land, local investigation is necessary, essential, requisite or proper.”

2. Order passed in **C.R.P.No.3760 of 2014 of Andhra High Court (K.Dayanand and Anr. /v/ P.Sampath Kumar)**, wherein it is held in paragraph No.25 as follows:

“25. There is no absolute bar on appointment of Commissioner in a suit for injunction also as per law laid down in the above referred judgments nor the provisions of Section 75 and Order XXVI Rule 9 do impose such a prohibition”.

3. **AIR 2005 AP 529 (J. Satyasri Rambabu /v/ A.Anusuya and Anr)**, wherein it is held in paragraph No.6 as follows:

“6.It is relevant to note that Order XXXIX Rule 7 of the Code of Civil Procedure empowers the Court to make an order for detention, preservation or inspection of any property, which is the subject matter of the suit, if the Court feels that such action is necessary or expedient for the purpose of obtaining full information or evidence. In the light of the above said provision, I am unable to agree with the contention of the learned Counsel for the petitioner that the Court below has



WEB COPY

C.R.P(PD)(MD).No.448 of 2018



committed an error in appointing an Advocate Commissioner.....”.

6. On hearing both and on perusal of records, it is clear that the revision respondent has filed the main suit for injunction along with the commission petition to identify the location and to note down the physical features of the suit property. As rightly argued by the learned counsel for the respondent that there is no bar in filing the commission petition in a suit for bare injunction. The Court is empowered to make an inspection of property which would not cause any prejudice to the party and the same would assist the Court for proper adjudication. On considering the citations relied on by both sides, it is very clear that there is no bar on appointment of Advocate Commissioner in a suit for injunction and the report of the Commissioner alone can never be the basis for deciding the suit and the report of the Commissioner could only aid the Court in evaluation the evidence to come to a conclusion. In this case on hand, the appointment of Advocate Commissioner is not sought for making enquiry about the factum of possession of the property to be adjudicated and only for identification and measurement of the property as there is a controversy between the parties in respect of area of land and measurement. In this case, the revision petitioners themselves state that an Advocate/Commissioner would not make correct measurements



without assistance of the Taluk Surveyor and Village Administrative Officer. On perusal of the impugned order, the Commissioner was directed to make inspection of the suit properties with the assistance of the Surveyor and Village Administrative Officer as stated by the revision petitioners. The other contention of the revision petitioners regarding the title over the properties could not be decided in the commission petition and the same can be decided only at final adjudication after let in evidence by both parties. There is nothing wrong in passing the impugned order by the Trial Court, which warrants no interference by way of this Civil Revision Petition and thus, this Civil Revision Petition fails.

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

25.07.2023

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



WEB COPY



C.R.P(PD)(MD).No.448 of 2018

To

- 1.The Principal District Munsif,
Kumbakonam.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(PD)(MD).No.448 of 2018

P.VADAMALAI, J.

vsd

Pre - Delivery Order made in
C.R.P(PD)(MD).No.448 of 2018
and
C.M.P(MD)No.1971 of 2018

25.07.2023