



C.R.P.(MD).No.2211 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2211 of 2018

and

C.M.P(MD) No.9852 of 2018

1. Chinnappa
2. Chidambaram
3. Sakthi
4. Selvamanickam
5. Duraimanickam

... Petitioners/Petitioners/Defendants

-VS-

Manickam
S/o.Chinnathambi
Represented by his Power Agent,
Vijaya
W/o.Manickam,
Chathirapatti Village,
Arasur Post,
Avudaiyarkoil Taluk,
Pudukkottai District.

... Respondent/Respondent/
Plaintiff

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.07.2018 made in I.A.No.457 of 2018 in O.S.No.8 of 2018 on the file of the District Munsif Court, Aranthangi to set aside the same.



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For Petitioners : Mr.N.Balakrishnan

For Respondent : Mr.M.Suresh

ORDER

The present Civil Revision Petition has been filed by the petitioners under Article 227 of the Constitution of India, against the fair and decreetal order dated 16.07.2018 made in I.A.No.457 of 2018 in O.S.No.8 of 2018 on the file of the District Munsif Court, Aranthangi to set aside the same.

2. The petitioners are the defendants before the trial Court.

3. For the sake of convenience, the parties will be referred to as per the litigative status before the trial Court.

4. According to the petitioners, the respondent/plaintiff has filed a suit for bare injunction in respect of the agricultural property situated in S.No. 10/2, Avudaiyarkoil Taluk, Chathirapatti Village. The said suit was contested by the defendant on the ground that the S.F.No.10/2 is merged with S.No.10/1 which cannot be demarcated separately as there is no separate boundaries between both the properties and that S.No.10/1 is kept as barren land for long



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time and there were bushes and other vegetation found there and the same is unfit to be cultivated and it is also in the possession of the village people. On the very same ground, to note down the physical features, the petitioners have filed an application for appointment of an Advocate Commissioner. Wherein the respondent/plaintiff has objected the application on the ground that the present Commission application has been filed only to collect the evidence and also to prove the possession.

5. The learned counsel for the petitioners relied upon the judgment of this Court reported in **2002 (2) CTC 199 (Saraswathy and another vs. Viswanathan)** and paragraph No. 11 is extracted hereunder:

“In my view, a local investigation is requisite and proper and the lower Court was in error in declining to appoint an Advocate Commissioner. Absolutely no prejudice would be caused by the appointment of an Advocate Commissioner.”

6. The learned counsel for the petitioners further relied upon the judgment of this Court reported in **2014 (4) TLNJ 365 (Anwar Batcha and another vs. Mahuedoom)** and paragraph Nos.11, 12 and 16 are extracted hereunder:



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“11. The expression 'elucidate' means to make lucid or clear, throw light upon, explain, enlighten. Where the Court is satisfied on the materials available on the record that a party is not able to produce the desired evidence for reasonable circumstances, it may assist the party to appoint a 'Commissioner' to get the evidence. However, such evidence is not binding on the Court, which is to appreciate the same along with other evidence. The party can 'countermand' the evidence of Commissioner's report by giving any other evidence. This dictum is laid down in Ankura & Ankura Charan Sahu v. Arjuna Charan Palei, reported in 1998 AIHC 1702 (Ori-DB). Besides this, in [Debendranath Nandi v. Natha Bhuiyan](#), reported in AIR 1973 Ori 240, it is held that the object of local investigation under rule is to obtain evidence which from it's peculiar nature can best be had from the spot.

12. The object of Order XXVI Rule 9 C.P.C., is not to assist a party to collect evidence where it can get the evidence itself, but the real object is for elucidating any matter in dispute by local investigation at the spot.

16. On the other hand, learned counsel



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appearing for the respondent/plaintiff has vehemently argued that the Order passed by the learned Trial Judge did not suffer with any infirmity and therefore the interference of this Court did not require. Further, he has submitted that it is settled principles of law that for procuring evidence Advocate Commissioner need not be appointed. This proposition will not be made applicable to the instant case on hand as the contention of the revision petitioners/defendants clearly demonstrates their object for elucidating the matter in dispute by local investigation of the Commissioner at the spot. Therefore, as contemplated under Rule 9 to Order XXVI C.P.C., this Court deems that a local investigation by the Advocate Commissioner is proper for the purpose of throwing more light or enlighten the Court to take a fair decision.”

7. The learned counsel for the respondent would also submit that now the suit was posted for further evidence of P.W.1. The respondent has also relied upon the judgment reported in **2009 (5) CTC 706 (Elango vs.kasthuri)** and paragraph No.11 is extracted hereunder:-

11. It is evident from the aforesaid provision



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of law that a Court may appoint an Advocate Commissioner in any Suit where it deems a local investigation is requisite for the purpose of elucidating any matter in dispute. It is necessary to point out that in the affidavit filed in support of the said application, it is stated by the respondent that he is likely to be dispossessed at any time and he need to prove that he is in possession of the suit property, which necessitated him to file this petition for appointment of an Advocate Commissioner to inspect the physical features of the suit property, indirectly seeking to note down the factum of possession under the pretext of noting of the physical features. Such a reason ought to have been rejected by the Court below as untenable.

8. From the above precedent, what emerges is that the Commissioner cannot be appointed to prove the possession and that the Commissioner cannot be appointed to collect the evidence and top of all, whenever the identity of the property is not in dispute, the question of appointing Commission will not arise. In this case, while perusing the suit property, the suit property is situated in S.No.10/2 and the ground raised for the



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appointment of an Advocate Commissioner is to note down the physical features in S.No.10/1.

9. Therefore, as rightly submitted by the learned counsel for the petitioners S.No.10/1, where there are huge vegetations and bushes and has been in the occupation of the village people, it is the very much evident that the very application filed by the petitioners appears thereof, only to collect the evidence to prove the possession which cannot be permitted as per law which decision is fortified by the judgments mentioned hereinabove. Therefore, this Court could not find any infirmity in the order passed by the learned trial Judge.

10. Thus, this Civil Revision Petition is **dismissed**. There shall be no order as to costs. Consequently connected Miscellaneous Petition is closed.

28.07.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The District Munsif Court,
Aranthangi.



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C.KUMARAPPAN,J.

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