



CRP (MD) No.910 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	04.07.2023
Pronounced on	11.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

CRP (MD) No.910 of 2023

and

CMP(MD)No.4171 of 2023

R.Krishnammal
W/o.Late Govindasamy Thevar

... Petitioner/ Petitioner

Vs.

1.R.Unnamalaiammal
2.R.Avuvaiyar
3.R.Kanniyakumari
4.R.Lakshmi
5. R.Govindaraj

... Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order made in I.A.N.02 of 2022 in O.S.No.10 of 2015 dated 20.09.2022 on the file of the Additional District Munsif, Sivagiri and allow this Civil Revision Petition.



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For Petitioner : Mr.N.Balakrishnan

For Respondents : Mr.M.Thirunavukkarasu

ORDER

This civil revision petition is preferred against the fair and decreetal order made in I.A.N.02 of 2022 in O.S.No.10 of 2015 dated 20.09.2022 on the file of the Additional District Munsif, Sivagiri.

2.The brief facts are as follows:-

The plaintiff has filed a suit in O.S.No.10 of 2015 on the file of the Additional District Munsif, Sivagiri, for declaration of title and for permanent injunction. During the pendency of the suit, the plaintiff filed an application in I.A.No.02 of 2022 in O.S.No.10 of 2015 for appointment of Advocate Commissioner to note down the physical features in the suit property. The said petition was resisted on the side respondents/defendants stating that an Advocate Commissioner cannot be appointed for collecting evidence. The Court below dismissed the above application by stating that the claim of the plaintiff cannot be ascertained by an Advocate Commissioner and the same



has to be proved only by oral and documentary evidence let in by the parties.

It is further stated that the suit was filed in the year 2015 and the application for appointment of Advocate Commissioner was filed belatedly only in the year 2022 and accordingly dismissed the above petition. Aggrieved by this, the present revision petition is filed by the plaintiff.

3. The learned counsel appearing for the revision petitioner would submit that the petition for appointment of Advocate Commissioner to note down the physical features, etc., is legally sound. Even in the absence of dispute with regard to identification of property, it would not disentitle the party to seek appointment of Advocate Commissioner to note down the physical feature of the property. Only by local inspection the matter in issue can be elucidated. The appointment of Advocate Commissioner in the present case is essential to note down the pathway and the irrigation of suit land from the property on the south of the suit property belonging to the husband of the plaintiff besides other physical features available on ground. The same cannot be established by oral and documentary evidence. The report and plan of the Advocate Commissioner would minimize the oral and



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documentary evidence and also save the time of the Court.

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4. On the other hand, the learned counsel appearing for the respondents/defendants would submit that advocate commissioner cannot be appointed for collection of evidence.

5. Heard on both sides and records perused.

6. The petitioner/plaintiff sought for appointment of Advocate Commissioner to measure the suit property in survey No.883 with the help of surveyor and to note down the physical features of the suit property. Apart from that to note down the crops and trees in the suit property and file his report and plan. In the petition he had stated that to the south of Survey No. 883 the property to an extent of 4 acre 52 cents along with well, belonged to her husband and his brother. From the said well, the petitioner/plaintiff is irrigating the crops and trees in the suit property. According to the petitioner/plaintiff, there is 10 feet pathway running south-north direction from the main road. The trial Court dismissed the above petition stating the



existence of the above 10 feet pathway should be proved only by oral and documentary evidence.

7. Admittedly, the parties have to file necessary documents and produce evidence to prove their title and their possession. However, when Court feels that elucidation of the matter requires an appointment of commissioner, it may appoint the Commissioner for that purpose. In the present case, this Court thinks fit that unless the Commissioner visited the property and note down the physical and other features and files a report there cannot be an effective adjudication. The existence of the pathway and other physical features of the property can be elucidated only by the report of the Advocate Commissioner. Though the Advocate Commissioner cannot be appointed for collecting evidence, but to elucidate matter which are local in character and which can be done only by local investigation at spot, the appointment of Advocate Commissioner becomes necessary. No doubt, the Commissioner cannot decide dispute but his report would help the Court in deciding the dispute. By noting down the physical features and measuring the suit property would be necessary to arrive at proper conclusion. The



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report of Advocate Commissioner would only be guiding factor.

No prejudice is caused to other side by appointing Advocate Commissioner.

8. In view of the above discussions, this Civil Revision Petition is allowed. The order of the trial Court refusing to appoint the Advocate Commissioner is set aside and the trial Court is directed to appoint the Advocate Commissioner for the purpose set out in the petition in support of the application for appointment of Advocate Commissioner. No costs. Consequently, connected miscellaneous petition is closed.

11.07.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes

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To

The Additional District Munsif,
Sivagiri.

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