



C.R.P.(MD)No.1980 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.09.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.1980 of 2024
and
C.M.P.(MD)No.11230 of 2024

1.M.Selvakumar

2.Sibin

3.Sasi Kumar

... Petitioners / Petitioners / Defendants

Vs.

N.George Wilson

... Respondent / Respondent / Plaintiff

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 06.06.2024 passed in I.A.No.3 of 2023 in O.S.NO.65 of 2020 on the file of the 2nd Additional District Munsif Court, Kuzhithurai.

For Petitioners : Mr.M.P.Senthil

For Respondent : Mr.S.Ramanathan



C.R.P.(MD)No.1980 of 2024

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ORDER

Heard both sides.

2. The defendants in O.S.No.65 of 2020 on the file of the II Additional District Munsif Court, Kuzhithurai are the revision petitioners herein. The respondent herein has filed the said suit for declaration and permanent injunction. The suit schedule measures 3 ½ cents of land. There is a dispute regarding identity and location of the suit property. That is why, the defendants filed I.A.No.3 of 2023 for appointing an advocate commissioner. The court below vide order dated 06.06.2024 dismissed IA on the ground that the defendants want to collect evidence. Questioning the same, this civil revision petition has been filed.

3. The learned counsel appearing for the revision petitioners reiterated all the contentions set out in the memorandum of grounds of revision and called upon this Court to set aside the impugned order.

4. Per contra, the learned counsel for the plaintiff submitted that the impugned order is well reasoned and that it does not warrant interference.



C.R.P.(MD)No.1980 of 2024

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5. I carefully considered the rival contentions and went through the materials on record.

6. In this case, there is a contest regarding the location of the suit property. The plaintiff states that the suit property is a separate piece by itself. On the other hand, the defendants claim that it is forming a part of the larger extent of land measuring 36 ½ cents of land. When the plaintiff was cross examined, he made it clear that he has no serious objection for appointing an advocate commissioner. My attention is drawn to the decision reported in **2014 (5) CTC 85 (Anwar Batcha Vs. Mahuedoom)**. Paragraph Nos. 9 to 12 of the said decision reads as follows:-

“9. Rule 9 to [Order XXVI of the Code of Civil Procedure](#) envisages that 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, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

10. From the texture of the languages coined in Rule 9 to [Order XXVI C.P.C.](#), it is explicit that it does not make any distinction between the plaintiff and the defendant or it does not have any reference to show that a particular party viz., either the plaintiff or the defendant alone shall file an application under Order 9 to [Rule XXVI C.P.C.](#), with a prayer to appoint an Advocate Commissioner. What it transpires is, where the Court deems a local investigation to be requisite or proper in any suit for the purpose of elucidating any matter, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.



C.R.P.(MD)No.1980 of 2024

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 its 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.”

7. I am more than satisfied that the case for appointing an advocate commissioner has been made out. The plaintiff will not suffer any prejudice. It is well settled that where there is a contest regarding location or identity of the suit property, an advocate commissioner has to be appointed.

8. In this view of the matter, the impugned order is set aside. The civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

24.09.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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C.R.P.(MD)No.1980 of 2024

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To:
The II Additional District Munsif Court, Kuzhithurai.



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C.R.P.(MD)No.1980 of 2024

G.R.SWAMINATHAN, J.

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C.R.P.(MD)No.1980 of 2024

24.09.2024