
(2009) 04 MAD CK 0126

In the Madras High Court

Case No : C.R.P. (PD) No. 112 of 2009 and M.P. (MD) No. 1 of 2009

Madhavan, Govindarajan, Rama Iyengar and R. Manoharan APPELLANT
Vs

Sundaramoorthy and Others RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 9

Citation : (2009) 04 MAD CK 0126

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : R. Sivakumar, for the Appellant; N.R. Murugesan, for the Respondent

Final Decision : Dismissed

Judgement

M. Venugopal, J.—The revision petitioners/petitioners/defendants have preferred this Civil Revision Petition as against the order dated

27.06.2008 in I.A. No. 81 of 2008 in O.S. No. 2862 of 1996 passed by the learned II Additional District Munsif, Tiruchirapalli in dismissing the

application filed by the petitioners under Order 26 Rule 9 of CPC praying for an appointment of an Advocate Commissioner to inspect the suit

property including the adjacent properties to the suit property and to note-down the physical features, including the lie and the character of the

property and to file his detail report with measurements and plan.

2. The trial court while passing orders in I.A. No. 81 of 2008 in O.S. No. 2862 of 1996 has inter alia opined that nearly 12 years have elapsed

from the date of institution of the main suit and therefore, the request of the revision petitioners praying permission for appointment of an Advocate

Commissioner is not to be accepted and that the main suit is ready for the conduct of the trial and resultantly, dismissed the application without

costs.

3. The learned Counsel for the revision petitioners/defendants urges before this Court that the order of the trial court is against facts and

probabilities of the case and further that the trial court has not taken note of the fact that by allowing the application for appointment of an

Advocate Commissioner for local inspection to the suit property will not any way prejudice the other side and moreover, the observation of the

trial court that the present Interlocutory Application has been filed after lapse of 12 years is untenable and that the revision petitioners have filed the

Interlocutory Application praying for appointment of an Advocate Commissioner only to determine the nature, character and lie of the suit property

to prove whether it is cultivable land or not and these factors have not been appreciated by the trial court in a proper perspective and therefore,

prays for allowing the Civil Revision Petition to prevent an aberration of justice.

4. Admittedly, a perusal of the plaint indicates that the plaintiffs have sought the relief of permanent injunction as against the defendants, their men,

agents, etc., from in any way interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs No. 2 to 8. The suit is

ready for conduct of the trial. It is not in dispute that the pleadings have been completed and issues have been framed by the trial court.

5. The main thrust of the argument projected by the revision petitioners is that the suit property earlier has been an agricultural land, but because of

the development of the adjacent lands as house sites, there has been no irrigation source and resultantly, the suit property has become an un-

cultivable one, even long before filing of the suit and as a matter of fact, on the date of filing of the suit, the suit property has become a dry land and

therefore, in order to place the nature and character of the suit property, the physical features, etc., together with the adjacent properties a local

inspection is just and necessary so as to enable the trial court to arrive at a fair and just conclusion in regard to the determination of

controversies/disputes between the parties in a complete and comprehensive manner.

6. It is to be noted that the power of a court to appoint an Advocate Commissioner is a discretionary one and this discretionary relief cannot be

granted on the basis of a litigant approaching the court without making out a

case for appointment of an Advocate Commissioner. Indeed, a court of law is not to assist a party by means of appointing an Advocate Commissioner when a party he or she can produce/procure the best evidence to substantiate their case, by adducing oral and documentary evidence, as per law.

7. On an oral assessment of the facts and circumstances of the case and taking note of the fact that the suit is of the year 1996 and the revision petitioners cannot indulge in a fishing expedition in regard to the request for appointment of an Advocate Commissioner, this Court is of the considered view that the controversies/disputes involved in the suit can best be solved by the parties by producing oral and documentary evidence on their side to substantiate the same and for that purpose the request for appointment of an Advocate Commissioner is only a surplusage and redundant and further, even without appointment of an Advocate Commissioner, this Court is of the considered view that the parties to the suit can establish their claim in the manner known to law and resultantly, there is no merit in the Civil Revision Petition and the same is hereby dismissed in the interest of justice.

8. Since the suit is of the year 1996 and the same is very much ready for the conduct of the trial, this Court as a matter of prudence and as an equitable relief, directs the trial court namely, the II Additional District Munsif Court, Tiruchirapalli to dispose of the main suit O.S. No. 2862 of 1996 on its file within a period of three months from the date of receipt of copy of this order, uninfluenced by any of the observations made by this Court in this revision. In regard to the completion of the trial court proceedings in the suit, the parties are directed to lend their assistance and cooperation. The trial court is directed to provide adequate opportunities to both parties to put forward their respective case in the manner known to law.

9. In the result, the Civil Revision Petition is hereby dismissed. Resultantly, the order passed by the trial court is confirmed for the reasons assigned by this Court in this revision. Having regard to the facts and circumstances of the case, there shall be no order as to costs in this revision petition.