

IN THE COURT OF THE DISTRICT MUNSIF, DEVAKOTTAI

PRESENT: Thiru. A. DHARANIDHARAN, B.Sc., M.L., M.A., LL.M.

District Munsif, Devakottai

Wednesday, the 24th day of November, 2021

I.A. 03/2021

in

O.S. No. 31/2018

- | | | | |
|----|---------------------|------|----------------------------------|
| 1. | Ayyathurai | | |
| 2. | Ganesan | | |
| 3. | Subramanian | | Petitioners/6 to 8
Defendants |
| | | Vs | |
| 1. | Pazhanivel Vagairah | | Respondent/Plaintiff |

This petition having been finally heard on 16.11.2021 in the presence of Mr. B. Asaithambi, learned counsel for the petitioners/6 to 8th defendants, and in the absence of the Respondents and upon hearing the arguments of petitioner and after perusal of the entire records and having stood over for my consideration till this day, this Court delivers the following:

ORDER

This is a petition filed under Order XXVI Rule 10 (2) (3) r/w Sec 151 of Civil Procedure code seeking to examine the Advocate Commissioner about the nature and extent of the work he had carried out at the time of inspection.

2. The averments set out in the petition/affidavit filed by the petitioner is as follows:

2.1 The Petitioner states that the Advocate Commissioner was appointed in I.A. No. 1207/2018 and on 09/02/2019, the Commissioner had inspected the suit property hurriedly and there were some discrepancies in his report and plan with respect to the Survey No. 407/6 and its sub-divisions; and the petitioner would like to know how the Commissioner has sought the assistance of the Taluk surveyor.

2.2 The Petitioner further states that the examination of the Advocate Commissioner does not cause any prejudice to the Respondent.

3. The Petition was filed on 27/08/2021. The respondents were given sufficient opportunities but they haven't come forward to file their objection. Hence, this Court was inclined to pass appropriate orders.

4. Now the point for consideration is, whether the petition filed by the Petitioners to examine the Advocate Commissioner is to be allowed or not?

5. No oral or documentary evidence was adduced on the side of the Petitioners/Defendants.

6. No oral or documentary evidence was adduced on the side of the Respondent/Plaintiff.

7. The petitioner was heard.

8. In order to appreciate the contention of the petitioner, the provisions contended in Order 26, Rule (2) and (3) of the Civil Procedure Code need to be looked into. **The said provision is extracted hereunder for useful reference:**

Order 26 Rule 10 – Procedure of Commissioner

(1) The Commissioner, after such local inspection as he deems necessary and after reducing to writing the evidence taken by him, shall return such evidence, together with his report in writing signed by him, to the Court.

(2) Report and depositions to be evidence in suit. Commissioner may be examined in person – The report of the Commissioner and the evidence taken by him (but not the evidence without the report) shall be evidence in the suit and shall form part of the record; but the Court or, with the permission of the Court, any of the parties to the suit may examine the Commissioner personally in open Court touching any of the matters referred to him or mentioned in his report, or as to his report, or as to the manner in which he has made the investigation. –

(3) Where the Court is for any reason dissatisfied with the proceedings of the Commissioner, it may direct such further inquiry to be made as it shall think fit.

The appointment of Commissioner is guided by circumstances in every case and they have to be appreciated by the Court independently. From an appraisal of law and procedure laid down in the above paragraphs it is emerged that appointment of a Commissioner for local visits and to investigate the physical features, is generally an indispensable process in the Civil litigation.

The A.P. High Court observed that according to sub-rule (2) of Rule 10 of Order XXVI, the report of the Commissioner and the evidence taken by him during the inspection shall be evidence in the suit and shall form part of the record was held in ***Smt. Vadda Rajeswaramma Vs. Dr. V.L. Narasimha Charyulu and Others, AIR 1988 AP 202.*** Therefore, there is no controversy with regard to admissibility of the report as evidence during the trial and making the report of the Commissioner part of record. However, it is said, before the report is made part of the record and taken as piece of evidence; it is open for the Court to examine the Commissioner on matter referred to him in his report or as to the manner in which he made the investigation. It is open for the parties also to examine the Commissioner or on the manner in which he had conducted the investigation. The Court observed that this is the only interpretation which can be placed upon sub-rule (2) of Rule 10. It is a different manner if neither the Court not any of the parties take any objection to the report. In such a situation the report becomes final and becomes part of the record and can also be taken as piece of evidence.

Hence, this court is of the considered opinion that the examination of the Advocate Commissioner is just and necessary.

In the result, this petition is allowed.

This Order was directly typed by me in my official laptop, corrected by me and pronounced by me in the open Court on this the 24th day of November, 2021.

**Sd./- A. DHARANIDHARAN,
District Munsif,
Devakottai**

Annexure:

List of witnesses on the side of the Petitioner/Plaintiff
NIL

List of documents on the side of the Petitioner/Plaintiff
NIL

List of witnesses on the side of the Respondents/Defendants
NIL

List of documents on the side of the Respondents/Defendants
NIL

**Sd./- A. DHARANIDHARAN,
District Munsif,
Devakottai.**

/True copy/