(2002) 11 MAD CK 0124

Madras High Court

Case No: Civil Revision Petition (PD) No. 1630 of 2002

The Treasurer, Chennai Devangar Mahajana Sabhai		APPELLANT
	Vs	
M. Rajappan, Paramasivam and Chennai Devangar Mahajana Sabhai		RESPONDENT

Date of Decision: Nov. 15, 2002

Acts Referred:

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

Citation: (2003) 1 MLJ 131

Hon'ble Judges: F.M. Ibrahim Kalifulla, J

Bench: Single Bench

Advocate: K. Padmanabhan, for Kurian and Associates, for the Appellant; T. Sivaprakasam, For Respondent-1, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

F.M. Ibrahim Kalifulla, J.
The petitioner has come forward with this revision as against the order of the Court below rejecting the petitioner''s application filed under Order 26, Rule 9, CPC, wherein the petitioner sought for the appointment of an Advocate Commissioner to verify as to the whereabouts of the first respondent of a particular period and also as to whether the first respondent''s name was found in the General Assembly Electoral Roll or the Family Ration Card or the Bank Passbook.

2. I am afraid that Order 26, Rule 9, CPC, cannot be invoked for ascertaining such facts, which can always be ascertained by way of letting in evidence, by which

process alone the petitioner will have to establish such factors.

3. The learned counsel for the petitioner relied upon the judgment of this Court reported in 1998 LW 112 (Ponnusamy Pandaram v. The Salem Vaiyappamalai Jangamar Sangam), with particular reference to paragraph 5, wherein the law has been well stated as under.

"... The object of local investigation under O.26, R.9 of the Code cannot be belittled. Its object is to collect evidence at the instance of the party who relies on the same and which evidence cannot be taken in court but could be taken only from its peculiar nature, on the spot. This evidence will elucidate a point which may otherwise be left in doubt or ambiguity on record. ... "

4. The highlighted part in the abovesaid paragraph would make it clear that only where the evidence so collected through the Advocate Commissioner will elucidate the point which would otherwise be left in doubt or ambiguity on record, resort can be had by invoking Order 26, Rule 9, CPC. When such being the legal position and when the purpose for which the petitioner seeks the appointment of Advocate Commissioner can very well be established by various other forms of evidence, I am of the view that the Court below was fully justified in rejecting the petitioner''s application filed under Order 26, Rule 9, CPC.

5. It is needless to point out that whether a person was residing in a particular place till a particular date is a matter which should be established only by other form of evidence and the same cannot be attempted to be established by resorting to appointment of Advocate Commissioner and thereby provide scope for making a roving enquiry. Equally, whether a person''s name is found in the Electoral Roll or Ration Card or Bank Pass Book can always be established by summoning the concerned records maintained for that purpose, and for which appointment of Advocate Commissioner cannot be resorted to. It cannot be held that the point which the petitioner seeks to establish can be done only by invoking Order 26, Rule 9, CPC, inasmuch as such points can as well be established by letting in appropriate evidence without giving room for any doubt or ambiguity on record. Therefore, I do not find any fault with the reasoning of the Court below in having rejected the petitioner''s application filed under Order 26, Rule 9, CPC.

In the result, the revision petition is dismissed. No costs.