

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HON'BLE **MS. JUSTICE R.MALA**

C.R.P.(PD).No.4096 of 2015

and

M.P.No.1 of 2015

1.A.Palaniammal

2.Kaleeswari

.. Petitioners/Respondents/
Defendants

Vs.

K.Ponkumar

.. Respondent/Petitioner/Plaintiff

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 21.08.2015 made in I.A.No.1666/2012 in O.S.No.533/2012 on the file of the District Munsif, Pollachi.

For Petitioner : Mr.T.M.Naveen

For Respondent : Mr.C.V.Vijayakumar

ORDER

Heard the learned counsel appearing for the revision petitioners and the learned counsel appearing for the respondent.

2. The petitioner has come up with the present Civil Revision Petition challenging the impugned order dated 21.08.2015 made in I.A.No.1666/2012 in O.S.No.533/2012 on the file of the District Munsif, Pollachi, wherein the application filed for appointment of an Advocate Commissioner to note down the physical features of the petition mentioned property came to be allowed.

3. The respondent herein as plaintiff has filed the suit in O.S.No.533 of 2012 seeking for the following reliefs:

"a) declaring the easementary right of the plaintiff to use the 'ABCD' cart track and pipeline mentioned as 'A' schedule to reach the 'C' schedule of properties.

b) granting a permanent injunction restraining the defendants and their men or agents from in any way interfering, obstructing with the plaintiff's possession and enjoyment of the cart track and pipeline.

c) directing the defendants to pay the cost of the suit;"

4. The learned counsel for the revision petitioners would submit that the plaintiff has claimed the aforesaid relief on the basis of the partition deed dated 16.09.1959, wherein it has been stated that 6 feet wide cart track has been given to the use of the other sharers. However, in the description of the property, the width of the cart track was wrongly mentioned as 15 feet. When once the plaintiff claims easmentary right by grant, there shall not be an easment by prescription. The said factum was not considered by the Trial Court while allowing the application for appointment of an Advocate Commissioner. Hence, the learned counsel for the petitioner prayed for set aside the order passed by the Trial Court and allowing the revision.

5. Resisting the same, the learned counsel for the respondent would submit that the respondent is none other than one of the sharer and he also got the property under the partition deed. In the said partition deed, even though it was mentioned as 6 feet wide cart track, the same would not be sufficient for ingress and egress. So, the actual width of the cart track is 15 feet. Further, since the respondent is in enjoyment of the same for more than 20+2 years, he derives easmentary right by prescription. Further, to prove the same, it is

necessary to appoint an Advocate Commissioner and the Trial Court has considered the same in proper perspective and allowed the application. Thus, the learned counsel for the respondent prayed for dismissal of the Civil Revision Petition.

6. Considered the rival submissions made by both sides and perused the typed set of papers.

7. In the plaint, it was stated that there was a partition between one Karuppa Gounder and his three sons namely, Senniappa Gounder, Arumuga Gounder and Krishnasamy on 16.09.1959. In the said partition deed, it was specifically mentioned that there was a 6 feet wide cart track to reach the 'CD' scheduled properties. On perusal of the plaint pleadings, it was further stated that the plaintiff is in enjoyment of the suit property for more than 20 years and hence, he derives easmentary right by prescription.

8. Further, it is also true that in the partition deed dated 16.09.1959, the width of the cart track has been mentioned as 6 feet. Whereas in the 'A' schedule of the property, the width of the cart track has been mentioned as 15 feet. Since the suit is for declaration of

easmentary right, it is necessary to appoint an Advocate Commissioner to verify the actual width of the cart track that is now available and whether it is in existence for more than 20 years?

9. In these circumstances, I am of the view that the Trial Court has considered the said aspect in proper perspective and has come to a correct conclusion that the appointment of Commissioner would not amount to collection of material evidence but only to adjudicate the matter in proper perspective and the order of the trial Court does not suffer any illegality or infirmity. Further, the point whether the plaintiff is entitled for declaration of easmentary right by prescription or grant have to be decided only at the time of trial, after letting in oral and documentary evidence.

10. Accordingly, the Civil Revision Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.

24.11.2015

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To

The learned District Munsif,
Pollachi.

R.MALA, J.

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