

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2015

CORAM:

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

C.R.P.(PD).No.4170 of 2015

and

M.P.No.1 of 2015

1.Periyasamy

2.P.Balasubramani

.. Respondents/Defendants/Revision Petitioners

Vs.

N.P.Shanmugam

.. Petitioner/Plaintiff/Respondent

Prayer:

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 21.07.2015 rejecting the memo filed by the petitioners herein in I.A.No.1094/2013 in O.S.No.448/2013 on the file of the District Munsif Court, Namakkal.

For Petitioners : Mr.D.Shivakumaran

For Respondent : Mr.N.Manokaran

ORDER

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

2. The revision petitioners have come forward with the present Civil Revision Petition challenging the impugned order dated 21.07.2015 made in I.A.No.1094/2013 in O.S.No.448/2013, wherein the memo filed by the revision petitioners/defendants came to be dismissed.

3. The learned counsel appearing for the revision petitioners would submit that the respondent herein as plaintiff has filed the suit for bare injunction in respect of the suit scheduled property along with the easementary right of pathway. In the said suit, the respondent/plaintiff had filed an application in I.A.No.1094 of 2013 under Order 26 Rule 9 CPC for appointment for an Advocate Commissioner to inspect the suit property with the help of the surveyor and file a report along with plan.

4. In the said application, an Advocate Commissioner was

appointed and the said Advocate Commissioner, after issuing notice to the counsels appearing for either side, inspected the property on 01.12.2013. During the course of inspection, the defendants prevented the surveyor to measure the suit property. Hence, the Advocate Commissioner was constrained to file a memo before the Court. Thereafter, the Trial Court directed the defendants to co-operate with the Advocate Commissioner for fulfilling his work and the memo was closed.

5. While so, the defendants submitted a memo of instruction on 09.12.2013, wherein they had sought for a direction to the Advocate Commissioner to verify if there is any pathway running on the Eastern side of P1 and Western side of P2 and P3 and also measure the properties on the basis of the title deeds and file a report along with the plan. However, the said memo was rejected against which the present Civil Revision Petition has been preferred.

6. Since the suit is for bare injunction and the respondent/plaintiff has claimed easementary right over the property, an Advocate Commissioner was appointed to assist the Court to arrive at a correct conclusion. So, it is the duty of the Advocate

Commissioner who is an officer of the Court to carry out the memo of instructions given by both the parties. Even though the said factum was not specifically mentioned in the warrant issued to the Advocate Commissioner, to do substantial justice, I am of the considered view that it is a fit case to give a direction to the Advocate Commissioner to carry out the memo of instruction given by both the parties in letter and spirit.

7. Accordingly, the Advocate Commissioner is directed to consider the memo of instruction given by both the parties and thereafter, measure the suit scheduled property with the help of a surveyor and file a report along with plan. Furthermore, the Advocate Commissioner is directed to find out whether there is any pathway running on the Eastern side of P1 and Western side of P2 and P3, as claimed by the defendants.

8. The Civil Revision Petition is disposed of with the above directions. Consequently, connected miscellaneous petition is closed. No costs.

15.12.2015

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To

The learned District Munsif,
Namakkal

R.MALA, J.

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