

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 04.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P (PD)No.1068 of 2013
and M.P.No.1 of 2013

1. M/s.Raja Steels Pvt. Ltd.,
No.100, Avarampalayam Road,
Ganapathy, Coimbatore.

2.Mani

.. Petitioners / Defendants 1 & 2

Vs

1.Ramasamy Gounder (deceased)
2.Ayyasamy
3.Sellathal
4.Saraswathi

.. Respondents / Plaintiffs

[RR2 to RR4 brought on record as
LRs of the deceased sole respondent
vide order of court dt.08.09.2014
made in MP Nos.1 to 3 of 2014 in
CRP PD No.1068 of 2013.

Prayer: Civil Revision Petition is filed under Article 227 of the
Constitution of India against the fair and decreetal order passed in
I.A.No.208 of 2012 in I.A.No.1889 of 2011 in O.S.No.357 of 2011
dated 07.03.2012 on the file of District Munsiff Court, Palladam.

For Petitioners : M/s.P.Satheesh Kumar

For Respondent : M/s.K.Govi Ganesan

ORDER

This revision is directed against the order passed by the District Munsiff Court, Palladam in I.A.No.208 of 2012 in I.A.No.1889 of 2011 in O.S.No.357 of 2011 dated 07.03.2012 on the file of

2. The petitioners are defendants 1 and 2 in O.S.No.357 of 2011 filed by the respondent for declaration of title to use and enjoyment of the existing 'B' Schedule suit cart track and for mandatory injunction to remove the obstacles over the same and for permanent injunction.

3. The case of the plaintiff is that by a sale deed dated 15.11.1961, the father of the plaintiff had purchased the cart track right over Survey No.332 & 329. In the suit, in I.A.No.1668 of 2011, the trial court appointed an Advocate Commissioner exparte. As per the order, the Commissioner visited the property on 17.12.2011, after intimation to the learned counsel for the plaintiff and at the time of inspection, the same was informed to the petitioners and also it was

carried in the presence of one Mr.Deva, Supervisor of the 1st defendant company. The Commissioner filed his report with a plan. The petitioner filed his objections to the Commissioner's report and filed I.A.No.208 of 2012 seeking issuance of the warrant to the Advocate Commissioner to revisit the property to note down the physical features in and around the suit properties, to note down the suit cart track lying in the property of the petitioners and existence of the alternative cart track for the plaintiff and to measure the petitioners property and the suit properties with the assistance of a surveyor. The application was resisted by the respondent by filing a detailed counter. The learned District Munsif, Palladam, dismissed the application. Aggrieved by the order, the present revision is filed.

4. Mr.P.Satheesh Kumar, learned counsel for the petitioners submitted that earlier Advocate Commissioner was appointed exparte and the inspection was done without proper intimation to the petitioners. He has further stated that even as per the case of the plaintiff, the FMB Sketch, the cart track is not found in survey numbers 332 & 329. It is further submitted that when there is dispute with regard to identity of property, the inspection can be carried out in the presence of the petitioners.

5. Per contra, Mr.K.Govi Ganesan, learned counsel for the respondent submitted that the plaintiffs claims right through a sale deed dated 15.11.1961 and he has to succeed or fail on his own case. If the plaintiffs had claimed right on easement of necessity, alternative cart track is relevant in this case. It is further submitted that the trial court has rightly considered the case of the parties and rejected the same which does not warrant interference by this Court.

6. It is seen that the commissioner's report shows that at the time of inspection, the supervisor of the petitioner company was present and the inspection was intimated to the second petitioner for which he had no objection. Therefore, the contention of the petitioner that the inspection was carried out without his knowledge cannot be accepted. As rightly observed by the trial court that the petitioners are not claiming right as easement of necessity and therefore the availability of cart track is not at all necessary in this case. Further, there is no dispute with regard to the extent of lands of the parties and therefore the entire demand for measurement of entire properties are not relevant. The trial court,, after considering the entire facts and circumstances of the case, dismissed the application. I do not find any reason to interfere with the order of the trial court.

7. In the result, this Civil Revision Petition is dismissed.

No costs. Consequently, connected Miscellaneous Petition is closed.

04.02.2015

Index:Yes/No
Internet:Yes/No
rgr

To

The District Munsiff,
Palladam.

K.KALYANASUNDARAM,J

rgr

Order in
C.R.P (PD)No.1068 of 2013

04.02.2015