

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.01.2016

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

C.R.P(PD).No.1257 of 2015
and M.P.No.1 of 2015

1.N.Senthilkumaran
2.N.Prabakaran
3.N.V.Selvakumar
4.Subbulakshmi
5.N.S.Thiruvengadam .. Petitioners/Defendants 1 to 5

Vs.

1.K.Devi .. 1st Respondent/Plaintiff
2.Muthusamy gounder
3.Nalini .. Respondents 2 and 3/Defendants 6 and 7

Prayer:- Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 19.02.2015 made in I.A.No.1058 of 2014 in O.S.No.273 of 2014 on the file of the District Munsif Court, Gobichettipalayam.

For Petitioner : Mr.N.Manokaran
For R1 : Mr.A.V.Arun
For R2 and R3 : No appearance

ORDER

Civil Revision Petition is filed against the fair and decreetal order dated 19.02.2015 made in I.A.No.1058 of 2014 in O.S.No.273 of 2014 on the file of the District Munsif Court, Gobichettipalayam.

2.The first respondent herein as a plaintiff filed a suit in O.S.No.237 of 2014 for declaration that she has every right to take water through ABC channel and now she wants to put up a PVC pipe line underneath the ABC channel to take water through another well and also injunction restraining the defendants 1 to 5 from interfering with the said process. Along with the plaint, the plaintiff has also filed an application in I.A.No.1058 of 2014 under Order 26 Rule 9 C.P.C. for appointment of Advocate Commissioner to inspect the suit property and file a report with plan. The trial Court, after hearing both sides, allowed the application, against which, the defendants 1 to 5 preferred this revision.

3.Learned counsel for the revision petitioners/defendants 1 to 5 submits that the first respondent/plaintiff has no right over the suit property. The trial Court has not given any valid reason for

appointment of Advocate Commissioner. He further submits that the defendants 6 and 7 also have no right over the suit property. Hence, he prayed for allowing the revision.

4. Resisting the same, learned counsel for the first respondent/plaintiff submits that the plaintiff has $\frac{1}{4}$ share over the well situated in S.No.702/1 and the defendants 1 to 5 have $\frac{3}{4}$ th share in the well situated in S.No.702/1. The sixth defendant has not given any right to the plaintiff to take water through S.Nos.702/1 and 702/3. But defendants 6 and 7 have not objected the plaintiff to draw water from the well through S.Nos.702/1 and 702/3 and the same has been properly considered by the trial Court. Since the plaintiff/first respondent is having right to take water from the well in S.No.701/1, which is situated on the end, she can only draw the water through the channel. Nowadays, due to natural calamities, water has not been reached the plaintiff's place, so she wants to put up PVC pipe. That factum was rightly considered by the trial Court. If Commissioner is appointed to inspect the suit property, no prejudice would be caused to the defendants. Therefore, he prayed for dismissal of the revision.

5.Considered the rival submissions made on both sides and perused the typed set of papers.

6.The first respondent herein as a plaintiff filed the suit for declaration that she is entitled to take water from the ABC channel, now she wants to put up PVC pipeline underneath ABC channel to water her lands. Admittedly, the plaintiff/first respondent is having 1/4th share in the well situated in S.No.702/1. The defendants 1 to 5/revision petitioners are having 3/4th share in the same.

7.Now it is appropriate to consider the application filed by the plaintiff, wherein it was stated that the Advocate Commissioner has to be appointed to inspect the suit property and file a plan along with the report to ascertain as to whether any channel is situated and whether it is conducive to the plaintiff to put up PVC pipe line underneath the channel. Because in para-7 of the plaint, it was specifically mentioned that when the plaintiff put up PVC pipe line, it was removed by the revision petitioners. In such circumstances, it is a fit case for appointment of Commissioner to sort out the dispute between both the parties. The trial Court has considered all the aspects in proper perspective manner and came to the correct

conclusion, therefore, the order passed by the trial Court does not suffer any infirmity or illegality and it is hereby confirmed. The civil revision petition deserves to be dismissed and it is hereby dismissed.

8.In the result, the Civil Revision Petition stands dismissed.
No costs. Consequently, connected Miscellaneous Petition is closed.

18.01.2016

Index:Yes/No

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To

The District Munsif Court, Gobichettipalayam.

R.MALA,J.

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