

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :05.10.2016

CORAM

THE HON'BLE MR. JUSTICE T.MATHIVANAN

C.R.P (NPD) No.123 of 2012

&

M.P.No.1 of 2012

Dalit Liberation Educational Trust
Represented by its Managing Trustee
Mr.Henry Thiagaraj

... Petitioner

Vs.

The Villagers of Chinnakuppam
Kadalore Village represented by
1. Baskar
2. Sudukattan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order and decretal order dated 06.04.2011 and made in I.A.No.392 of 2009 in O.S.No.222 of 2005 on the file of the District Munsif, Madurantagam.

For Petitioners : Mr.R.Thiagarajan

For Respondents : Mr.N.Nagu Sah

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ORDER

The fair and decretal order dated 06.04.2011 and made in the interlocutory application in I.A.No.392 of 1999 in the suit in O.S.No.222 of 2005 are under challenge in this memorandum of Civil Revision.

2. Heard Mr.R.Thiagarajan, learned counsel appearing for the revision petitioner and Mr.N.Nagu Sah, learned counsel appearing for the respondents 1 and 2.

3. It is manifested from the records that the revision petitioner, being the plaintiff, had filed the suit in O.S.No.222 of 2005 as against the respondents herein on the file of the learned District Munsif, Madurantagam and thereby sought the relief of permanent injunction, restraining the respondents, their men, agents, servants, legal representatives and heirs from in any way interfering with the peaceful possession and enjoyment of the revision petitioners Trust over the schedule mentioned properties by forming any road in the suit properties or any other mode. The suit property situated in Kancheepuram District, Cheyyar Taluk, Lathoor Firka, Kadaloore Village, is morefully described in the plaint as under:

Punja S.No	369/2A	1.86.0 Hec	Ac.3.42 cents
	369/2B	0.10.0 Hec	0.18 cents

Punja S.No	369/2A	1.86.0 Hec	Ac.3.42 cents
	369/2C	1.60.0 Hec	2.93
	370/1	0.70.0 Hec	0.13 cents
	370/2	0.06.0 Hec	0.11 cents
	370/3	0.63.0 Hec	1.17 cents

4. During the pendency of the suit, the revision petitioner had taken out an interlocutory application in I.A.No.392 of 2009 under Order XXVI Rule 9 and 10 of the Code of Civil Procedure to appoint an Advocate Commissioner to inspect the property situated at No.105, Kadaloore Village, Lathoor Firka, Cheyyur Taluk, Kanchipuram District. This petition was contested by the respondents by filing their counter statement and after hearing both sides, the learned District Munsif, Madurantagam had proceeded to dismiss that application on the ground that for the very same relief, the revision petitioners/plaintiff had already instituted a suit and a commissioner was also appointed and that the said Commissioner had inspected the property. The Court had also discussed about the feasibility of alternative pathway in the prior suits and hence, the location of the land and nature of the property need not be reiterated in the present suit. It was further observed by the learned trial Judge that it was not necessary to obtain the evidence from the spot and to elucidate the matter in dispute, in the present suit and therefore the appointment of commissioner is not warranted.

5. Mr.R.Thiagarajan, learned counsel, while advancing his arguments, has fairly admitted that earlier two suits viz., O.S.No.364 of 1992 and O.S.No.235 of 1997 were filed by the revision petitioners and both the suits were taken up simultaneously. Ultimately, the trial Court had dismissed the suits, against which two appeals were filed in A.S.No.12 of 2002 and A.S.No.14 of 2002 and after hearing both sides, the first appellate Court had proceeded to dismiss both the appeals as against which two second appeals in S.A.Nos.2097 and 2098 of 2004 were filed by the revision petitioners / plaintiffs. This Court while disposing the second appeals in a common judgment on 09.12.2004 has observed in Paragraph Nos.5 and 6 as under:

"5.A Commissioner was appointed and he filed a report mentioning the existence of a pathway, as claimed by the defendants. Defendants also filed Exs.B1 and B2, which were appreciated by the Courts below, to establish their case. With reference to alternative pathway, the Courts below have found that the plaintiffs have not established that alternative pathway to the defendants is available. The Courts below, appreciating the oral and documentary evidence, found that for more than 100 years the villagers are using the pathway, as claimed by the defendants, and in view of the said factual finding, I am not inclined to interfere with the same.

6.With respect to the submission of the learned counsel that the Courts below should have decided about the width of the pathway, the Courts below are not asked to fix the width of the pathway. It is the plaintiffs'case that there is no pathway at all.

So, on the basis of the finding that the pathway was available, the suits were dismissed. So, the question of fixing the width does not arise.”

6. Insofar as the present revision is concerned, Mr.R.Thiagarajan, while advancing his arguments has invited the attention of this Court to Paragraphs Nos.3 and 4 of the affidavit filed in support of the petition in I.A.No.392 of 2009 from which this Court is able to understand that the plaintiff is running a Delta Nursing School where the students, who are young women, are imparted nursing education in the school run by the plaintiff's trust. The students, who are all aged between 17 to 23, residing and pursuing their education in the Nursing institute run by the plaintiff trust. Since mainly the young women/adolescent students from rural poor families are residing at residential hostel attached to the nursing institute, it is desirable that the persons who are trying to pass through the property belonging to the plaintiff are prevented so that the young women students from socially backward communities who are pursuing their studies are not subjected to any eve teasing or ragging by the villagers.

7. In this connection, Mr.R.Thiagarajan has also submitted that the villagers of Chinnakuppam hamlet in Kadaloore village have got an alternate black top road adjacent to the compound wall erected around the premises to

reach their hamlet and the said road has been laid down by the District Collector taking into consideration the population in the said Chinnakuppam. Mr.R.Thiagarajan has also contended that recently, at the time of disposal of the second appeal or even at the time of filing the suits in O.S.No.364 of 1992 and O.S.No.235 of 1997, the above said black top road was not formed or located adjacent to the compound wall and hence there is no question of alternative pathway. Mr.R.Thiagarajan has demonstrated the existence of black top road with the help of google map which depicts the said black top road, which is formed recently adjacent to the compound wall of the petitioners'. It is apparent from the google map that though it was not produced at the time of enquiry before the trial Court, it is absolutely necessary to help this Court for taking fair decision.

8. Mr.R.Thiagarajan has also contended that paramount consideration is, the protection of children who are studying in the petitioner's trust institution. The villagers, who are passing through the school campus saying that they are having the right to have "pattai". He has further submitted that when they are having alternative road, abutting the compound wall of the educational institution, they could very well use that road instead of having access through the petitioner's property.

9. In support of his contention, he has placed reliance upon the following decision:

Ponnusamy Pandaram V. Salem Vaiyappamalai Jangamar Sangam reported in **AIR 1986 Madras 33** wherein at paragraph 6 Hon'ble Mr. Justice Nainar Sundaram has held in paragraph 6 as under:

6. The object of local investigation under O. XXVI, R. 9 of the Code cannot be littled. 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."

10. The provisions of Order XXVI Rule 9 CPC also very much essential to be referred to. Rule 9 of Order XXVI reads as follows:

"Order 26, Rule 9: Commissions to make local investigations:--

"In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court"

11. Insofar as this case is concerned, it is obvious to note here that previously two suits were filed in O.S.No.364 of 1992 and O.S.No.235 of 1997 and those two suits were dismissed and the judgments and decrees of the trial

Court were also confirmed by this Court in the second appeal while disposing the same on 09.12.2004. As already addressed at the time of pronouncement of the judgment in the second appeal, no alternative road was formed and now the petitioners are able to show that alternative black top road has been formed adjacent to the compound wall of the institution.

12. On the other hand, the learned counsel for the respondents has vehemently argued that the order of the trial Court did not require any interference because in earlier attempt the revision petitioner, being the plaintiff, had failed and subsequently this is the third innings in which they wanted to establish their earlier prayers which could not be granted as the same was already rejected.

13. This Court would like to place it on record that at the time of filing the earlier suits and at the time of pronouncement of common judgment in the second appeals, the alternative pathway was not formed. Now the google map which is produced by the petitioner, depicts that the black top road has been formed adjacent to the compound wall . Therefore, this Court finds that by appointing an Advocate Commissioner to note down the physical features, no prejudice would be caused to the respondent.

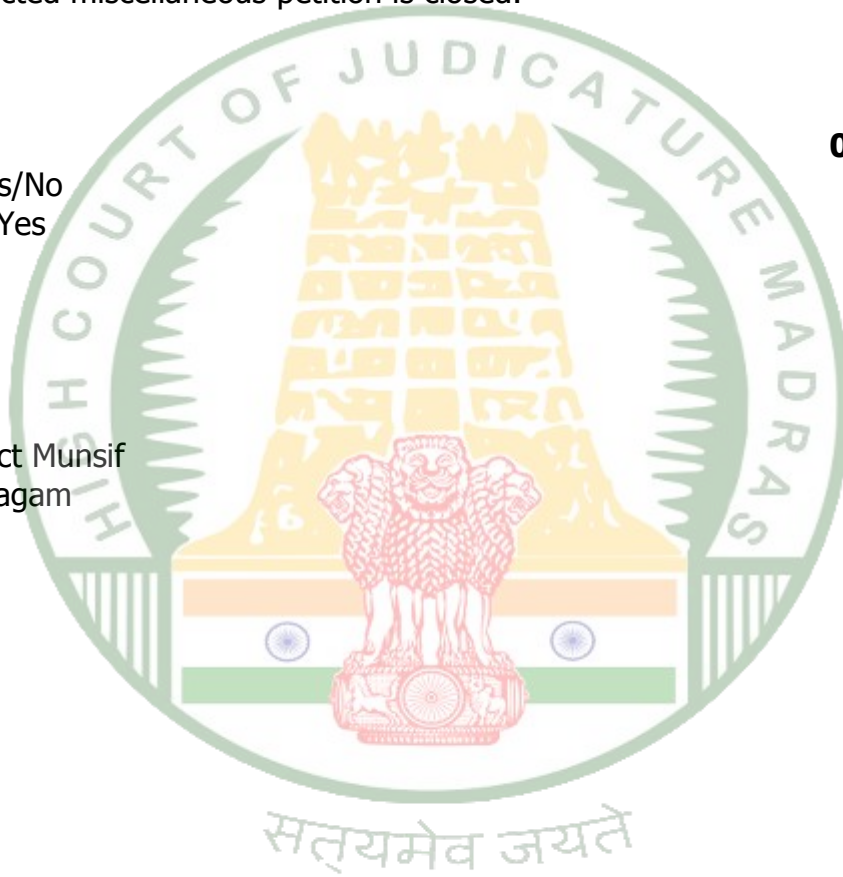
In view of the forgoing discussions, this revision deserves to be allowed. Accordingly, this revision is allowed. No costs. The Court below shall appoint an Advocate Commissioner within a period of two weeks from the date of receipt of a copy of this order and proceed further in accordance with law. Consequently, the connected miscellaneous petition is closed.

05.10.2016

Index: Yes/No
Internet: Yes
gpa

To

The District Munsif
Madurantagam



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T.MATHIVANAN.J.,

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