

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

C.R.P. (PD) No.1569 of 2016

and

C.M.P.No.8444 of 2016

1.Palanisamy Gounder

2.Rajasekar

.... Petitioners

Versus

1.Samiappa Gounder

2.Balusamy

3.Rathinasamy

S/o.Chinnasamy

4.Rathinasamy

S/o.Palanisamy

5.Palanisamy

6.Chenniappa Gounder

7.Saminathen

8.Karunaharen

9.Eswaren

10.Muthukumar

.... Respondents

Civil Revision Petition filed under Article 227 of Constitution of India praying to set aside the order dated 04.09.2015 in I.A. No.343 of 2015 in O.S. No.30 of 2013 on the file of the District Munsif, Kangeyam.

For Petitioners : Mr.N.Valliamma

ORDER

This revision challenges the order of learned District Munsif, Kangeyam, passed in I.A. No.343 of 2015 in O.S. No.30 of 2013 on 04.09.2015.

2. Heard learned counsel for petitioners.

3.The petitioners/plaintiffs have preferred O.S.No.30 of 2013 seeking permanent injunction. By way of I.A.No.343 of 2015 in O.S.No.30 of 2013, the petitioners/plaintiffs sought appointment of an Advocate Commissioner towards measuring the suit property with the assistance of revenue officials and to file a report.

4.Learned counsel for petitioners submits that petitioners/plaintiffs have been prevented from putting fencing upon their property which necessitated the petitioners/plaintiffs moving the suit seeking permanent injunction.

5.In dismissing the said I.A. No.343 of 2015 in O.S.No.30 of 2013, the Court below taking into consideration the fact that Advocate Commissioner's report has been filed without any objection on either side, has informed that the petitioners had stated the width of the pathway is nearly 20 feet and the North South pathway is 23 feet while the Advocate Commissioner appointed earlier had found the width of the pathway North to South at 22½ feet. The Court below informed that it was clear that the respondents had used the property of the petitioners as pathway. From the contentions of both sides, it

was clear that right of pathway claimed by the respondents is not an easement by grant and stated that whether the cause of action for the relief of injunction is sustained has to be tried in the suit. Document produced by the petitioners/plaintiffs along with the plaint did not show the width of the pathway. In the circumstances, the appointment of Advocate Commissioner was found unnecessary. The question of entitlement of the parties to the pathway and of encroachment could be gone into on appreciation of the oral evidence of the parties. This Court finds no error in the order under challenge.

6.The Civil Revision Petition shall stand dismissed. No costs.
Consequently, connected Civil Miscellaneous Petition is closed.

07.06.2016

vga

To

The District Munsif, Kangeyam

C.T.SELVAM, J.

vga

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