

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **06.09.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2563 of 2016 and
CMP.No.13128 of 2016

1.Rajan Jabaseelan
2.Franklin

...Petitioners

versus

1.Selvi
2.Saroja

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 21.04.2016 passed in I.A.No.928 of 2015 in O.S.No.585 of 2014 on the file of Hon'ble Principal District Munsif Court, Poonamallee.

For Petitioners : Mr.D.Senthil Kumar

ORDER

This Civil Revision Petition is directed against the order dated 21 April 2016 in I.A.No.928 of 2015 in O.S.No.585 of 2014, whereby and where under, the learned Principal District Munsif, Poonamallee appointed an Advocate Commissioner to inspect the suit property and submit a report with respect to its physical features, taking into account the contention taken by the respondents that there is a move to modify the pathway in Plaint "B" Schedule property.

2. The petitioners contended that the respondents have not produced any document to show that there was a pathway through the property in "B" Schedule property and as such, the Trial Judge was not correct in appointing an Advocate Commissioner.

3. According to the learned counsel for the petitioners, the attempt of the respondents was only to collect evidence through Advocate Commissioner and as such, the Court was not correct in appointing a Commissioner.

4. The respondents filed a suit against the petitioners praying for a decree of declaration and consequential injunction. The respondents have claimed easementary right through the property in "B" Schedule. The suit was contested by the petitioners by filing written statement. The petitioners have taken up a contention that there was no such way through "B" Schedule property.

5. The respondents filed an application in I.A.No.928 of 2015 for appointment of Advocate Commissioner. The respondents in the affidavit filed in support of the interlocutory application indicated that the petitioners are making attempt to remove the physical features in

"B" Schedule property and as such, it is absolutely necessary to appoint an Advocate Commissioner. Though the application was opposed by the petitioners by filing counter affidavit, the learned Judge opined that it would be in the interest of both the parties to appoint an Advocate Commissioner to inspect the property in question.

6. The respondents have taken a specific contention in the plaint that they have been using the way through plaint "B" Schedule Property and as such, they got easementary right through the said property. During the currency of the suit, the respondents filed the application contending that there is an attempt now made by the petitioners herein to obstruct the way through the property in "B" Schedule and remove the physical features, and as such, it would be highly necessary to note down the physical features by appointing an Advocate Commissioner. No prejudice would be caused to the petitioners by appointing an Advocate Commissioner to report about the physical features in so far as "B" Schedule property is concerned. It is true that Advocate Commissioner cannot be appointed to collect evidence. However, in the subject case, the appointment of Commissioner made by the learned Judge was for a different purpose. It was only to inspect the property and to report about the physical features. Since the respondents have

claimed easementary right, it is for them to prove that they have been using the pathway through "B" schedule property continuously, so as to enable them to obtain a decree of declaration. I am therefore of the view that the learned Judge was perfectly correct in appointing an Advocate Commissioner.

7. The learned counsel for the petitioners submitted that the petitioners would produce documents before the Trial Court to substantiate their contention that there was no such way through plaint "B" Schedule property. It is always open to the petitioners to produce materials before the Trial Court to prove their contentions taken in the written statement.

8. The Civil Revision Petition is dismissed with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

06.09.2016

Index:Yes/No
svki

K.K.SASIDHARAN, J.

(svki)

To

The Principal District Munsif Judge,
Poonamallee.

C.R.P.(P.D.) No.2563 of 2016

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