

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.3919 of 2009
and
M.P.No.1 of 2009**

K.Soundarrajan

.. Petitioner

Vs.

1.Kandasamy Gounder

2.Selvaraj

3.Angammal

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and final order dated dated 17.09.2009 made in I.A.No.1009 of 2009 in O.S.No.304 of 2009 on the file of the learned 1st Additional District and Sessions Judge, Coimbatore.

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For Petitioner : Mr.G.Ethirajulu

For Respondents : Mr.V.Chinnasamy

ORDER

The gist of the case is necessary for the disposal of this Civil Revision Petition. The plaintiff is the revision petitioner and he filed a suit against the respondent herein and two others in O.S.No.304 of 2009 before the 1st Additional District and Sessions Judge, Coimbatore for partition and separate possession and also for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit 3rd item of property. The above suit was contested by the defendants by filing written statement. Pending suit the defendants 1 to 3/respondents herein took out an application in I.A.No.1009 of 2009 seeking for an appointment of Advocate Commissioner to note down the physical features of the suit properties and also to note down the blocked north-south common cart track meant for the revision petitioners and respondents herein.

2.The reason for appointment of Advocate Commissioner was stated by the respondents herein that the revision petitioner is none other than the son of the respondents 1 and 3 herein and brother of the 2nd respondent herein. There is a common car-track from the east-

west main road. The revision petitioner obtained an order of interim injunction in the above suit and by taking advantage of the interim injunction, he blocked the North-South cart-track road by barbed fencing with stone pillars leaving only a small of 5 feet width on the northern side and 10 feet width on the southern side, which is the only way to reach the petitioner herein and respondents herein. Therefore the appointment of Advocate Commissioner is absolutely necessary to note down the obstruction made in the common cart track by the plaintiff/revision petitioner.

3.Per contra, the revision petitioner contented that he never blocked the north side cart track road and wire barbed fence which is in existence for a quite long time. The commissioner application filed by the respondents herein is only for the collection of evidence. He has further stated that there is no dispute regarding the identity of the suit property and the commissioner cannot be appointed to prove possession over the suit property.

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4.Upon hearing the rival submission on both side and considering the facts of the case the learned trial Judge was pleased to appoint an Advocate Commissioner by order dated 17.09.2009. Challenging the same, the revision petitioner has come up with this Civil Revision

Petition.

5.I heard Mr.G.Ethirajulu, learned counsel appearing for the petitioner and Mr.V.Chinnasamy, learned counsel appearing for the respondents and perused the entire records.

6.In this case the fight is between the father and son. It is an admitted case of both parties that there existed a car-track road. According to the respondents herein the said cart-track road running North-South which is the only access to reach their respective house and lands which was blocked by the revision petitioner. But the said contention was denied by the revision petitioner stating that he has not blocked the said car-track road.

7.The learned counsel appearing for the revision petitioner has relied on a judgment reported in **2007 (1) MLJ** in the case of **Chinnathambi and others v. Anjalai** wherein it is held that

“It is well settled principle of law that an Advocate Commissioner should not be appointed to find out the possession of the property, which has to be adjudicated by Court after recording oral and documentary evidence.”

8. There is no dispute with regard to the principle of law laid down in the above judgment that no commissioner should be appointed to find out the possession of the property. This Court has no second opinion regarding the said proposition of law. But the facts involved in the present case on hand are totally different and therefore the above said judgment referred by the learned counsel for the revision petitioner will have no application to the present case.

9. As stated above, the question to be decided here is whether the car-track road is obstructed by the revision petitioner or not? To decide the same, in the considered opinion of this Court the appointment of the Advocate Commissioner is very much necessary. As rightly held by the Learned trial Judge to find out any block or obstruction made in the existing car-track and what is the nature of the car-track, measurement of the car track are could be decided only by appointing an Advocate Commissioner. Therefore the appointment of Advocate Commissioner in the present case cannot be stated that it is for collecting evidence or to prove the possession of the property. During the course of the arguments, it is brought to my notice that Advocate Commissioner appointed by the lower Court also inspected the suit property and he filed his report and copy of report filed by the learned Advocate Commissioner also produced before this Court.

Therefore no further adjudication is required in this matter.

10. In view of the discussion above this Court has no hesitation to uphold the order passed by the learned trial Judge. Under such circumstances, the order of the lower Court does not suffer from any material irregularity and the same is liable to be confirmed, accordingly confirmed.

11. In the result, this Civil Revision Petition is dismissed by confirming the order passed made in I.A.No.1009 of 2009 in O.S.No.304 of 2009 on the file 1st Additional District and Sessions Judge, Coimbatore, dated 17.09.2009. Consequently, connected miscellaneous petition is closed. No costs.

29.11.2016

Note: Issue order copy on 05.12.2017

vs

Internet: Yes/No

Index: Yes/No

To

The 1st Additional District and Sessions Judge,
Coimbatore.

M.V.MURALIDARAN, J.

VS



**Pre-delivery order made in
CRP(PD)No.3919 of 2009
and
M.P.No.1 of 2009**

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