

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **09.11.2016**

CORAM:

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

C.R.P.(P.D.) No.757 of 2016
and
CMP.No.4184 of 2016

Peria Gounder

...Petitioner

versus

1. Velliangiri
2. Kaliammal
3. Malliraj
4. Ramaraj
5. Prema
6. Minor Soundarya
7. Minor Janani
8. Sundari
9. Muthulakshmi

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.08.2015 passed in I.A.No.1047 of 2013 in O.S.No.275 of 2013 on the file of Principal District Munsif Court, Bhavani.

For Petitioner : Mr. T.Muruga Manickam

For respondents : Mr. N.Manokaran

ORDER

The first respondent filed a suit for declaration and mandatory injunction in O.S.No.275 of 2014 before the Principal District Munsif

Court at Bhavani. In the said suit, the first respondent filed an application in I.A.No.1047 of 2013 for appointment of an Advocate Commissioner to inspect the suit property and to submit a report with respect to the physical features. The application was kept pending by the trial court. The application was ultimately allowed by order dated 24.8.2015. The said order is under challenge in this petition.

2. Learned counsel for the petitioner submitted that the application was filed as early as on 20.8.2013. However, it was allowed only in 2015. According to the learned counsel, there is nothing to be noted now, on account of the efflux of time. The learned trial Judge was therefore not correct in allowing the application.

3. The learned counsel for the first respondent justified the order passed by the trial court. According to the learned counsel, the first respondent being the plaintiff in the civil suit is bound to prove the plaint averments and it was only to report about the physical features, the application for appointment of Advocate Commissioner was taken. According to the learned counsel, the report filed by the Advocate Commissioner would be of considerable help to the trial court for an effective adjudication of the matter.

4. The suit is one of declaration and mandatory injunction. The burden of proof is on the first respondent to plead and prove that there was such a cart track as pleaded in the plaint. It is more so on account of the fact that the petitioner, who is none other than the brother of the first respondent, disputed the contentions with regard to existence of cart track.

5. The learned trial Judge was of the view that in view of the denial of existence of the cart track, appointment of an advocate commissioner is absolutely necessary. The said order was passed, taking into account the contentions taken by the petitioner as well as the first respondent. The order being purely discretionary is not liable to be set aside, by exercising the jurisdiction under Article 227 of the Constitution of India.

6. In the upshot, I dismiss the Civil Revision Petition. No costs. Consequently, connected miscellaneous petition is closed.

09.11.2016

Index:Yes/No

ajr

K.K.SASIDHARAN, J.

ajr

To

The Principal District Munsif Court, Bhavani
Cuddalore.

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