

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2016

CORAM

THE HONOURABLE MR. JUSTICE P.R.SHIVAKUMAR

C.R.P (PD) No.938 of 2016

&

C.M.P.No.5293 of 2016

1.P.Thiyagarajan
2.P.Ganesan

... Petitioners

VS.

1.K.Erusa Gounder
2.K.Thiruppathi
3.K.Ganesan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and final order dated 07.12.2015 passed in I.A.No.1143 of 2015 in O.S.No.1157 of 2012 on the file of the Principal District Munsif Court, Salem.

For Petitioners : Mr.R.Nalliyappan

ORDER

This revision is filed against the order of the trial Court, namely the Court of the District Munsif, Salem dated 07.12.2015 made in I.A.No.1143 of 2015 in O.S.No.1157 of 2012 pending on the file of the

said Court. The said application came to be filed by the petitioners herein, who are the defendants in the above said suit, for appointment of an Advocate Commissioner to inspect the suit property and note down the physical features especially to find out the existence or otherwise of a cart track claimed by the respondents/plaintiffs. The application was resisted by the respondents herein/plaintiffs. The learned trial Judge, after hearing both sides, dismissed the said application by the impugned order.

2. The Civil Revision Petition stands listed today for admission. The arguments advanced by Mr.R.Nalliyappan, learned counsel for the petitioners/plaintiffs are heard. The certified copy of the impugned order and copies of the other documents produced in the form of typed-set of papers are perused.

3. The original suit came to be filed by the respondents herein for a permanent injunction restraining the petitioners herein not to prevent them from using the suit cart track, which according to them, is a common cart track left as per a partition deed and it is also a plan marked cart track. The relief of injunction has been sought for on the ground that the petitioners/defendants, being the owners of the

property in the front portion, not only made attempts to destroy the cart track, but they were also successful in destroying that part of the cart track which passes through their portion and thereby they have deprived the respondents/plaintiffs from using the suit cart track.

4. The petitioners herein/defendants filed their written statement long back in 2013 in which they contended that there was no cart track in existence and the alleged partition deed was not at all acted upon. Besides making such a plea, the petitioners herein/defendants had also stated in their written statement that if an Advocate Commissioner was appointed, his report would show the non-existence of cart track on ground.

5. Having taken such a plea long back in 2013 itself, the petitioners/defendants waited for two more years, allowed the case to be made part heard and thereafter, filed the above said application for appointment of a Commissioner. The appointment of a Commissioner, as rightly held by the Court below, will not render any help to the Court to arrive at a conclusion as to whether the respondents/plaintiffs do have a right of cart track in the property claimed to be a common cart track.

6. The plaintiffs have also made clear averments that the cart track passing through the portion of the defendants has been obstructed and obliterated and thereby, the respondents herein/plaintiffs are prevented from using the same to reach their properties. That being the nature of pleading made by the respondents herein/plaintiffs, the appointment of a Commissioner to show that there is no well beaten cart track at present, will not render any help to the Court to find out whether there was a cart track or not.

7. The respondents/plaintiffs, based on their plea that they were prevented by the petitioners / defendants from using the cart track, have chosen to file the suit for injunction against the petitioners not to prevent them from using it. Cart tracks in villages cannot be equated with pakka roads laid with gravel or metal tops. If a particular track is earmarked as a cart track, the persons having right to use it will use it as a passage for human beings, cattle etc., besides taking the carts and other vehicles. When the case of both the petitioners and the respondents is that at present the cart track is not in use because of the prevention made by petitioners, it shall be clear that even if the Advocate Commissioner goes there, he cannot find a cart track and the same will not be enough to prove or disprove the right of cart track

claimed by the respondents/plaintiffs. The same has to be proved by adducing oral and documentary evidence. After causing obliteration of the cart track, the petitioners / defendants cannot try to show that there is no cart track at present on ground. In addition, the petition for appointment of an Advocate Commissioner came to be made belatedly and by the passage of time, even if there was a cart track prior to the filing of the suit, traces of the cart track would have disappeared and the petitioners/defendants seem to have made an attempt to take advantage of such a position, if at all there was a cart track. Hence, this Court is not in a position to find fault with the order of the trial Court refusing appointment of an Advocate Commissioner to inspect the suit property for the purpose advocated by the petitioners/defendants. There is no defect or infirmity in the order of the trial Courts warranting interference with the same. The revision does not have any merit in it and the same deserves dismissal at the threshold.

Accordingly, the Civil Revision Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

23.03.2016

Index: Yes/No
Internet: yes/No
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P.R.SHIVAKUMAR.J.,

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To

The Principal District Munsif Court
Salem

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