



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2016

CORAM:

WEB COPY

THE HONOURABLE Mr. JUSTICE C.T.SELVAM

C.R.P.PD(MD)No.569 of 2011

and

M.P.(MD)No.1 of 2011

1.Kulandai
2.Rama Gounder
2.Palaniyappan ... Defendants / Petitioners / Petitioners

Vs.

1.Kaliyammal
2.Annavee ... Plaintiffs / Respondents / Respondents

PRAYER: The Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 09.12.2010 in I.A.No.744 of 2010 in O.S.No.171 of 2008 on the file of the District Munsif Court, Kulithalai.

For Petitioners : Mr.K.Govindarajan
For Respondents : Mr.S.Gokulraj for
Mr.R.Vijayakumar

O R D E R

This Civil revision petition arises against the dismissal of I.A.No.744 of 2010 in O.S.No.171 of 2008.

2.The revision petitioners are the defendants in the suit. The respondents preferred the suit, contending that a pathway leading to their field, was put up for their own and exclusive use, the petitioners / defendants, who were earlier permitted to use the same, are interfering with their exclusive possession of the pathway and sought a decree of injunction. By way of written statement, the petitioners had admitted the existence of the pathway, but, contended that the same was not solely put up by the defendants, but, the same also extended upto the fields of the defendants and proceeded further. In effect, the defence was that the pathway claimed as belonging to the plaintiffs was a common pathway.

3.The petitioners / defendants filed I.A.No.744 of 2010 for appointment of an Advocate Commissioner. Such application was dismissed on 09.12.2010. Such application has been moved at the stage when the matter was posted for trial.



4. Heard the learned counsel for the petitioners and the learned counsel for the respondents.

5. This Court is of the view that when rival parties to the action are uniform in informing that there is a pathway and when the plaintiffs inform the pathway to be put up further exclusive use and the defendants admit the existence thereof, but inform that the same extends along their field and proceeds further and such is a common pathway, the appointment of an Advocate Commissioner towards filing a report on the lie of the pathway would enable the Court to arrive at a proper decision. For the said reason, the civil revision petition shall stand allowed. The order dated 09.12.2010 in I.A.No.744 of 2010 in O.S.No.171 of 2008 is set aside and the court below shall now appoint an Advocate Commissioner to inspect the suit property in the presence of Revenue Officials towards his filing a report regarding the pathway. The Advocate Commissioner shall specifically inform where the pathway begins and where the same ends and also indicate whether the same abut lands belonging to the plaintiffs or defendants. Advocate Commissioner is also required to file a sketch along with a report.

6. The court below shall afford a period of two weeks for effecting such exercise and thereafter, the suit shall be disposed of as expeditiously as possible, in any event, not later than 4 months from the date of receipt of the Advocate Commissioner's report.

7. The Civil Revision Petition stands allowed. No costs. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To
The District Munsif, Kulithalai.

+1CC to Mr.R.Vijayakumar, Advocate Sr.No.24865

GJM/SKS/RR/13.6.16-2p-3C

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