

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.02.2017**

CORAM

THE HON'BLE MRS.JUSTICE **PUSHPA SATHYANARAYANA**

CRP PD.No.1237 of 2014

and

M.P.No.1 of 2014

E.K.Saravanan

.. Petitioner

vs

1. K.P.Shanmugam

2. Balakrishnan

3. P.Saravanan

4. The Executive Officer
Athanoor Town Panchayat
Rasipuram Taluk
Namakkal District

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 11.10.2013 passed by the learned District Munsif, Rasipuram, Namakkal District in I.A.No.533 of 2013 in O.S.No.37 of 2013.

For Petitioner : Mr.N.S.Sivakumar

For Respondents : Mr.S.Sithirai Anandam
for RR1 to 3
Mr.L.P.Shanmuga Sundaram
for R4

ORDER

The plaintiff has filed the above revision against the order, dismissing the application filed by him, to appoint an Advocate Commissioner to measure the suit property.

2. The suit is one for injunction. The injunction is with respect to the common pathway, in which the plaintiff and the defendants 1 to 3 have got right of way. Earlier, I.A.No.305 of 2013 was filed by the plaintiff for appointment of the Commissioner and the same was allowed directing the Commissioner to measure the suit property, with the help of the land surveyor and with reference to the revenue records. Accordingly, on 07.04.2013, the Commissioner visited the suit property. When the Commissioner visited the suit property on 10.05.2013, the defendants 1 to 3 had raised the construction. Again on 13.06.2013, when the Commissioner went to the site, instruction was given to him to measure the suit property with reference to the sale deeds.

3. In the present I.A.No.533 of 2013 the prayer of the plaintiff is that the Commissioner has to measure the AB suit scheduled property with respect to Survey No.41/1B12, with reference to the sale deeds dated 03.09.1957 and 22.01.1965 belonging to defendants 1 to 3. The reason given by him is that the defendants are trying to encroach upon the common pathway.

4. Whereas it was the contention of the defendants that the said pathway is not a common pathway and it exclusively belongs to them. The sale deeds referred to by the plaintiff dated 03.09.1957 and 22.01.1965 did not mention about the existence of the common pathway. Therefore, it is not necessary for the Commissioner to measure the property with reference to the said sale deeds and hence prayed for the dismissal of the application.

5. The court below after considering the submissions made on either side, dismissed the application. Challenging the same,

the present revision is filed.

6. Heard both sides.

7. It is the case of the revision petitioner/plaintiff that the defendants have obtained a building permit including the common pathway, in which the plaintiff has also got the right of way. In fact, in the suit attached plan the said portion has been shown as AB. According to the plaintiff, the survey properties have been subsequently sub divided and therefore, it is necessary to measure the property with reference to the sale deeds, under which the defendants claim title. Already, the Commissioner has been appointed, who was directed to measure the property with reference to the revenue records with the assistance of the surveyor. Even, according to the plaintiff only that portion, which is marked as AB in the suit property is the disputed property. While so, when admittedly the defendants lands are not the suit property, there is no necessity for seeking a direction to the Commissioner to measure the property as per the sale deeds, which have been executed in favour of the

defendants.

8. Inasmuch as it is a suit for injunction, it is for the plaintiff to establish that he has the right of way over the suit property to get a decree from the Court. Even assuming for a moment that the defendants are not appearing, the plaintiff has to independently proof his right or title over the suit property based on his documents. Therefore, the Commissioner cannot be directed to measure the suit property with reference to the documents standing in favour of the defendants, when the same is not shown as a suit property.

9. Therefore, the relief sought for by the plaintiff in the application cannot be granted and the trial court has rightly dismissed the same, warranting no interference in this revision. Accordingly, the revision fails and the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

03.02.2017

vj2

Index : Yes/No

Internet: Yes

PUSHPA SATHYANARAYANA,J.,

vj2

To

The District Munsif, Rasipuram
Namakkal District

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