

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.3890 of 2014

C.Kuppan

.. Petitioner

Vs.

1.S.V.Manickam

2.D.Govindasamy

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the order dated 22.08.2014 made in I.A.No.679 of 2014 in O.S.No.417 of 2011 on the file of the II Additional District Munsif Court, Vellore.

For Petitioner : Mr.R.Margabandhu
For R1 and R2 : No Appearance

ORDER

The Civil Revision Petition is filed against the order dated 22.08.2014 made in I.A.No.679 of 2014 in O.S.No.417 of 2011 on the file of the II Additional District Munsif Court, Vellore.

2. The petitioner is the plaintiff and respondents are the

defendants in O.S.No.417 of 2011. The petitioner filed the said suit for declaration of petitioner's right of pathway in B schedule property and for injunction. The respondents filed written statement on 09.06.2012 denying the existence of path way. The petitioner filed I.A.No.679 of 2014 for appointment of an Advocate Commissioner to note down the physical features and measure the property with the help of the surveyor and file a report.

3. The respondents filed counter affidavit and opposed the said application and stated that the petitioner is trying to fish out information.

4. The learned Judge, considering all the averments made in the affidavit, counter affidavit and materials available on record, dismissed the application holding that when there is a dispute with regard to the right of the pathway, it is for the petitioner to prove his case by acceptable evidence.

5. Against the said order of dismissal dated 22.08.2014 made in I.A.No.679 of 2014, the present Civil Revision Petition is filed by the petitioner.

6. Though notice was served on the respondents and their

names were printed in the cause list, there is no representation on behalf of the respondents either in person or through counsel.

7. Heard the learned Senior Counsel for the petitioner and perused the materials available on record.

8. The case of the petitioner is that the B schedule property is the pathway to reach his A schedule property. The respondents are preventing him from using the said pathway in B schedule property. The respondents are denying the existence of pathway itself in B schedule property. In such circumstances, it is necessary to appoint an Advocate Commissioner to find out whether there is any pathway exist in B schedule property. If there is any pathway, it is for the petitioner to prove his right to use the same.

9. The learned Judge has misunderstood that the respondents are denying the right of the petitioner to use the pathway. On the other hand, the respondents are denying the existence of pathway. In view of the above facts, the impugned order passed by the learned Judge is liable to be set aside and it is hereby set aside.

10. In the result, the Civil Revision Petition is allowed by

setting aside the order dated 22.08.2014 made in I.A.No.679 of 2014. The learned Judge is directed to appoint Advocate Commissioner to inspect the suit property and to file report whether there exist pathway in the suit property within a period of two weeks from the date of receipt of a copy of this order, with a direction to the Advocate Commissioner to file his report within four weeks thereafter. The learned Judge is further directed to dispose of the suit in O.S.No.417 of 2011 within a period of three months from the date of receipt of report from the Advocate Commissioner. No costs.

08.11.2017

Index : Yes/No
dm/kj

To

II Additional District Munsif, Vellore.

V.M.VELUMANI, J.

dm/kj

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