

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.5161 of 2011
and
M.P.No.1 of 2011**

1.Perumal Gounder
2.Chinnapaiyan
3.Saravanan
4.Murugan
5.Rangasamy
6.Kundappan @ Palanisamy
7.Kandasamy
8.Chinnapillai
9.Chandra
10.Sakunthala

.. Petitioners

Vs.

1.M.Karuppannan
2.K.Sasikumar
3.K.Kannan

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the Additional District Munsif Court at Tiruchengode, dated 06.08.2011 in I.A.No.416 of 2011 in O.S.No.98 of 2011.

For Petitioners : Mr.P.Valliappan

For Respondents : Mr.B.Gopalakrishnan

ORDER

This civil revision petition is directed against the fair and decreetal order of the learned District Munsif at Tiruchengode, dated 06.08.2011 made in I.A.No.416 of 2011 in O.S.No.98 of 2011.

2.The learned District Munsif, Tiruchengode, vide the above order dated 06.08.2011 has partly allowed the respondent/plaintiff application filed under Order 26, Rule 9 of CPC seeking appointment of Advocate commissioner to note down the physical features of the suit property and to file a plan.

3.The respondents as plaintiffs have filed the above suit for permanent injunction as against the respondents.

4.According to the respondents the suit properties are their exclusive ancestral properties and they are in Joint possession. It is their case that the defendant who are adjacent land owners having constructed a house in their property attempted to encroach upon over

the respondent's properties on 24.03.2011. Hence the above suit.

5.I heard Mr.P.Valliappan, learned counsel for the petitioners and Mr.B.Gopalakrishnan, learned counsel for the respondents and perused the entire materials available on record.

6.The revision petitioners/defendants filed the written statement contenting that there is common cart tract existed time memorial used by the entire village and hamlets.

7.It is their case that the revision petitioners have right to ingress and egress through said cart tract. It is their further case that the said cart tract was attempted to dismantle by plaintiffs by annexing with their land. The said attempt was prevented by the revision petitioners.

8.In the said circumstance, the respondent/plaintiff filed Interlocutory Application in I.A.No.416 of 2011 under Order 26, Rule 9 of CPC seeking appointment of Advocate commissioner to note down the physical features of the properties and file a plan. The Learned Trial Judge has partly allowed the respondent application with direction

to the commissioner to inspect the suit properties and as to find whether there is connectivity of such alleged cart tract with neighboring Survey Number. The said order is under challenge in this civil revision petition.

9. Hearing upon rival submissions and perusal of records, it is seen that it is the case of the revision petitioners that the suit cart track is a public path way used by the villagers. In such circumstances the revision petitioners cannot have any bonafide objection for inspection by the Advocate commissioner. The Learned Trial Judge considering the facts and circumstances of the case, held that the commissioner report on inspection of suit property will minimize oral evidence. It is further held that the commissioner report will enable it to arrive at just and proper decision.

10. It is needless to say that the appointment of Advocate Commissioner will in no way prejudice interest of the revision petitioners.

11. In the result:

(a) The Civil Revision Petition is dismissed by confirming the

order passed in I.A.No.416 of 2011 in O.S.No.98 of 2011, dated 06.08.2011, on the file of the Additional District Munsif Court, Tiruchengode;

(b) The trial Court is directed to pass suitable orders directing the Advocate Commissioner to inspect and note down the physical features of the suit schedule of property and file a report within a period of one month, on filing the report, the trial Court is hereby directed to dispose of the suit within a period of three months thereafter. No costs. Consequently, connected miscellaneous petition is closed.

27.03.2017

vs

Note: Issue order copy on 18.02.2019

Internet: Yes

Index: Yes

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To

The Additional District Munsif Court,
Tiruchengode.

M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRP(PD)No.5161 of 2011
and
M.P.No.1 of 2011**

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