

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 17.03.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(NPD)No.3426 of 2013
and
M.P.No.1 of 2013**

1.Krishna Reddy
2.Muniamma
3.Gullamma
4.Rathnamma
5.Jayamma

.. Petitioners

Vs.

1.Veera Nagappa
2.Pillappa
3.Hanumanthappa
4.Nagesh
5.Manju
6.Moorthy
7.Kumar
8.Suma

.. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the Fair and Decretal orders of the learned District Munsif cum Judicial Magistrate, Denkanikottah, dated 08.07.2013 in I.A.No.210 of 2013 in O.S.No.186 of 2008.

For Petitioners : Mr.J.Hariharan
for Mr.V.Nicholas

For Respondents : Mr.V.Raghavachari

ORDER

This Civil Revision Petition is directed against the Fair and Decreetal Order of the learned District Munsif cum Judicial Magistrate of Denkanikottah dated 08.07.2013 made in I.A.No.210 of 2013 in OS.No.186 of 2008.

2.The revision petitioners herein as plaintiffs has filed the above suit seeking for declaration of their easementary right of pathway over the alleged suit Cart track cum pathway in suit schedule property and consequential permanent injunction restraining the respondents and they have also sought for mandatory injunction to restore the alleged obliterated suit cart track. The respondents / defendants filed written statement and contended that the revision petitioners have no right whatsoever over the suit schedule property.

3.In the above suit, the Advocate Commissioner was appointed by the trial Court and he also has inspected the suit properties and

filed his report and plan. In the said circumstances the defendants has filed the above interlocutory application in I.A.No.210 of 2013 seeking to scrap the Commissioner report contending that the Commissioner report lacked material particulars and further contending that the vital aspects were not gone through by the Advocate commissioner and the report did not reflected any useful particulars enabling the Court to execute adjudicate the Lis.

4.The said application was allowed by the trial Court by scrapping the Commissioner's report holding that the report suffered out of infirmity and the said order of scrapping the commissioner's report is under challenge in this civil revision petition by the plaintiffs / revision petitioners.

5.I heard Mr.J.Hariharan for Mr.V.Nicholas, learned counsel for the petitioners and Mr.V.Raghavachari, learned counsel for the respondents and perused the entire materials available on record.

6.It is seen that having felt that the Advocate Commissioner's report on record, did not reflect the actual measurement and that the report suffered out of several infirmities as cited by the parties and

that both the parties have filed their respective objections to the Commissioner report attacking the details of the report, the trial Court has held that the Commissioner's report is untrustworthy and accordingly scrapped the report.

7.It is needless to say that when the trial Court is of the opinion that the report is unreliable, it is natural and just for the trial Court to scrap the report.

8.Admittedly as seen above the suit on hand is one for mandatory injunction and hence a clear report is indispensable for proper adjudication of the report.

9.On the other hand either party may not have any prejudice or bonafide objection to have a report demonstrating the actual and correct particulars and that both the parties have filed objections attacking the previous report.

10.Therefore, I do not find any infirmity or irregularity with the impugned order of the trial Court scrapping the Advocate Commissioner's report.

11.In the result:

(a) this civil revision petition is dismissed by confirming the Fair and Decreetal Order passed in I.A.No.210 of 2013 in O.S.No.186 of 2008 dated 08.07.2013 on the file of the learned District Munsif cum Judicial Magistrate, Denkanikottah;

(b) the trial Court is directed to take up the suit on day to day basis, without giving any adjournment to either parties and to dispose of the suit within a period of three months from the date of receipt of a copy of this order, since the suit is for the year 2008. Both the parties are hereby directed to give the fullest co-operation for early disposal of the suit. No costs. Consequently connected Miscellaneous Petition is closed.

17.03.2017

vs

Note:Issue order copy on 15.02.2019

Index:Yes

Internet:Yes

To

The District Munsif cum Judicial Magistrate,
Denkanikottah.

M.V.MURALIDARAN, J.

VS



Pre-Delivery order made in
CRP(NPD)No.3426 of 2013
and
M.P.No.1 of 2013

WEB COPY **17.03.2017**