



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.02.2017

CORAM:

WEB COPY

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.371 of 2017 (PD)

and

C.M.P (MD) No.1837 of 2017

1.Sivalingam

2.Shanthi

....Petitioners/Respondents 1 & 2/
Plaintiffs

Vs.

1.E.Arumugam

2.R.Vijayalakshmi

....Respondents 1 & 2/Petitioners/
Defendants 1 & 2

3.The District Collector,
Thanjavur District.

4.The Revenue Divisional Officer,
Thanjavur District.

5.The Tahsildar,
Thiruvaiyaru Taluk,
Thanjavur District.

...Respondents 3 to 5/Respondents 3 to 5/
Defendants 3 to 5

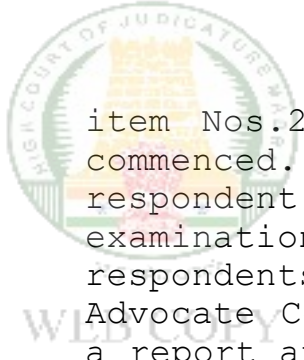
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the Fair and Decreeal Order 17.03.2016 by the Learned District Munsif Court, Thiruvaiyaru made in I.A.No.665 of 2015 in O.S.No.193 of 2013.

For Petitioners : Mr.R.Rajaraman

ORDER

The petitioner has filed this Civil Revision Petition to set aside the Fair and Decreeal Order, dated 17.03.2016 passed by the learned District Munsif, Thiruvaiyaru made in I.A.No.665 of 2015 in O.S.No.193 of 2013.

2.The petitioners are the plaintiffs and the respondents are the defendants. The petitioners filed suit in O.S.No.193 of 2013 for mandatory injunction to remove the hut put up by the respondents 1 & 2 through respondents 3 to 5 and for permanent injunction restraining the respondents 1 & 2 from preventing the petitioners using pathway in first item of the property to reach



item Nos.2 & 3. The respondents are contesting the suit. Trial commenced. Plaintiffs side evidence was closed. The first respondent filed proof affidavit and suit is posted for cross-examination by the respondents 1 & 2. At that time, the respondents 1 & 2 filed I.A.No.665 of 2015 for appointment of Advocate Commissioner to note down the physical features and file a report and plan. According to the respondents 1 & 2, trees grown in the first item of the suit property and petitioners are not using the first item as pathway and they are using Survey No.24-B as pathway to reach item Nos.2 & 3 of the suit property. Unless an Advocate Commissioner appointed and inspected the property and filed his report with regard to Trees grown in the first item of the property, issue in the suit cannot be effectively decided.

3.The petitioners filed counter and opposed the said application. The petitioners submitted that whether there is a pathway in first item can be decided only by Revenue Records. The respondents 1 & 2 have filed application only to collect evidence and to drag on the proceedings.

4.Before the learned Judge, the petitioners did not let in any oral evidence and marked three documents as Ex.A1 to A3. Respondents did not let in any oral and documentary evidence.

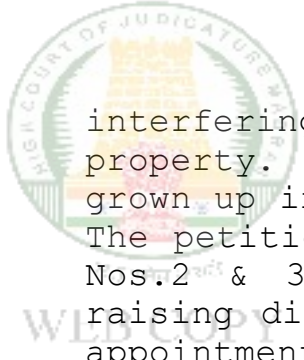
5.The learned Judge considering the averments made in the affidavit and counter affidavit and documents allowed the application and appointed an Advocate Commissioner to note down the physical features as first item of suit property and trees grown therein obstructing the pathway.

6.Against the order passed by the learned District Munsif appointing an Advocate Commissioner in I.A.No.665 of 2015, the petitioners have come out with the present Civil Revision Petition.

7.The learned counsel for the petitioners submitted the learned Judge failed to see that the petitioners filed suit for injunction and after commencement of trial, after completion of evidence on behalf of the petitioners and first respondent filed proof affidavit when it was posted for cross-examination, the respondents 1 & 2 filed application for appointment of Advocate Commissioner only to drag on the proceedings and to collect evidence.

8.I have heard the learned counsel appearing for the petitioners and also perused all the materials available on record.

9.The petitioners have filed suit for mandatory injunction as well as permanent injunction restraining the respondents from



interfering with their usage of pathway in first item of the suit property. The respondents 1 & 2 have contended that Trees have grown up in the said property and it is not being used as pathway. The petitioners are using Survey No.20-B as pathway to go to item Nos.2 & 3 of the property. In view of the rival contentions raising disputes with regard to first item of the property, the appointment of Advocate Commissioner to note down the physical features and whether trees are grown up in the first item of the property obstructing pathway will Assist the Court in deciding the issue. In the circumstances, the contention of the learned counsel for the petitioner that respondents 1 & 2 have filed application only to collect evidence has no force. In the circumstances, there is no illegality or irregularity in the order of learned Judge warranting interference by this Court.

10.In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The District Munsif,
Thiruvaiyaru.

+1cc to Mr.R.Rajaraman, Advocate, SR.No:10455

Am

AE/SKN/RSK/28.03.2017/3P/3C

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23.02.2017