

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 31.10.2017****CORAM:****THE HONOURABLE MRS.JUSTICE J.NISHA BANU****C.R.P. (MD) .No.2370 of 2013 (PD) &
M.P. (MD) .No.1 of 2013**

Muthaiah Nadar

... Petitioner/Petitioner

Vs.

Petchimuthu

... Respondent/Respondent

Prayer: Petition is filed under Article 227 of the Constitution of India against the fair and decreetal order passed in I.A.No.145 of 2013 in O.S.No.269 of 2009 on the file of the District Munsif Court, Kovilpatti, dated 23.09.2013 by allowing this civil revision petition.

For Petitioner : Mr.C.Bharathi

For Respondent : Mr.N.S.Ramakrishna Dass

ORDER

The petitioner is the plaintiff and the respondent is the defendant. The petitioner/plaintiff has filed a suit in O.S.No.269 of 2009 for permanent injunction before the District Munsif Court, Kovilpatti, in respect of II schedule property which is access to the I schedule property as described in the plaint.

2. The case of the petitioner/plaintiff is that he is using the II schedule property as a cart track since he purchased the I schedule property on 03.09.1979. While that being so, the respondent/defendant tried to close the cart track by putting up a wall. Hence, the above-said suit.

3. Pending suit, the petitioner/plaintiff filed an interlocutory application for appointment of Advocate Commissioner to note down the physical features and to measure the cart track available on the ground. Accordingly, the Advocate Commissioner has been appointed and he has also filed his interim report dated 28.01.2011 and final report dated 13.07.2011. The case of the petitioner is that he filed objection to the report of the Advocate Commissioner, as bereft of adequate particulars as to the details of the encroached wall on the cart track and therefore

filed I.A.No.143 of 2013 for reissue of the Commissioner.

4. The learned counsel for the respondent would submit that the Trial Court after taking note of the facts and circumstances of the case, rightly dismissed the application. Further, he would submit that the Commissioner has filed the final report on 13.07.2011 and after the period of one year the petitioner has filed the petition to re-issue the commissioner, which is unwarranted. As per the Commissioner report there is no cart track in the respondent survey number.

5. I have carefully considered the submissions made by the learned counsel on either side.

6. At ground No.3 in the memorandum of grounds, the petitioner has stated that he has filed objection to the Commissioner report. On the contrary, a perusal of records would go to show that the petitioner has not filed any objection to the Commissioner report as such. Even assuming there is a possibility of re-issuance of the Commissioner, that would also do not serve any useful purpose since in the earlier Commissioner report it is stated there is no cart track in the respondent property as stated by the petitioner and only to harass the respondent, the petitioner has filed the petition to re-issue the Commissioner. The learned Trial Judge has rightly stated so in the impugned order.

7. In view of the above, the civil revision petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The District Munsif Court,
Kovilpatti.

+ 1 cc TO Mr.C.Bharathi , Advocate in SR No. 84417

+ 1 cc TO Mr.N.S.Ramakrishna Dass , Advocate in SR No. 84897

jijr

AE/KK/SAR2/29.11.2017/2P/4C

Order made in
C.R.P. (MD) .No.2370 of 2013 (PD) &
M.P. (MD) .No.1 of 2013
31.10.2017