

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**CRP(PD)No.1281 of 2018
and
C.M.P.No.6583 of 2018**

1.Syed Saheb
2.Anarkali
3.Ziaullah
4.Fairoz

.. Petitioners

Vs.

Shakil Ahamed

.. Respondent

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the orders of the learned District Munsif cum Judicial Magistrate No.I, Hosur, dated 13.12.2017 in I.A.No.192 of 2017 in O.S.No.184 of 2013 and allow the above CRP.

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For Petitioners :M/s.N.E.A.Dinesh

ORDER

The Civil Revision Petition has been filed by the petitioners against the order in I.A.No.192 of 2017 in O.S.No.184 of 2013 on the file of the learned District Munsif cum Judicial Magistrate No.I, Hosur, dated 13.12.2017.

2. The learned counsel for the petitioners would submit that declaring the right of the plaintiff over using the common way (Cart Track) provided in a gift settlement deed executed by one Pyram Bi in favour of the defendant No.1, vide document No.2134/1998 on the file of the Sub Registrar, Denkanikottai, to reach the lands of the plaintiff in S.No.654/2 and S.No.725/4 of Panchakshipuram Village to ingress and egress the plaintiff, his men, women, servants, cattle, bullock cart and other agricultural operations on the common way (Cart Track) leads in the defendants lands bearing S.Nos.654/1, 724/1 and 725/1 of Panchakshipuram Village more fully described in the schedule of property for common way (Cart Track) to the plaintiff, his men, women, servants, agents and others to reach the lands of the plaintiff, O.S.No.184 of 2013 on the file of learned District Munsif cum Judicial Magistrate I, Hosur, has been filed. During the pendency

of the suit, petitioners/defendants filed a petition under Order 26 Rule 9 of CPC for appointment of a new Advocate Commissioner for inspecting the suit property and note down the physical features of the suit property and to scrap the Advocate Commissioner's report filed earlier. The trial Court failed to see that when there is no road in the northern side of S.Nos.724/1, 724/2, 724, 663, 659 and 723 from Machinayakanapalli to Jagir Karupalli and there is only a mud path way and thus the report is contrary to the physical features and the rough plan filed by the Advocate Commissioner, in particular, the cart track and also the road on the northern side of S.No.724/1 and 724/2. The Advocate Commissioner has not taken note of the memo given by the counsel for the defendants at the time of inspection of the suit property. The Court below failed to see that the Commissioner has not noted the Southern side of S.Nos.654/2 and 725/4 and road in S.No.727 which connected to Machinayakanapalli to Jagir Karupalli and running from S.Nos.650 to 727 and the road reached to other survey numbers. The trial Court failed to consider the objection filed by the defendants to the report and plan of the Advocate Commissioner in a proper light and the defendants have placed sufficient reasons and grounds for scrapping the report of the Commissioner and to appoint a new Commissioner to inspect the suit property and note down the physical features and ready to bare all

the expenses in appointing a new Commissioner and no prejudice would be caused to the plaintiff in this regard. The reasons of the Court below for dismissing the petition filed by the defendant to scrap the report of the Commissioner and to appoint a new Commissioner are palpably wrong both in law and on facts.

3. Heard the learned counsel appearing for the petitioner and perused the materials available on records.

4. After hearing of the arguments, the learned counsel for the petitioner admitted that the suit is one for easement right pathway, the Commissioner has noted down the physical features of the main pathway and also alternative pathway in the report which is enough for deciding the suit and the Advocate Commissioner's report need not be scrapped.

5. The revision petition is dismissed. However, it is made clear that the trial Court is to take into consideration, the Commissioner report only to the extent of the scope and object of the suit and not otherwise. No costs. Consequently, connected miscellaneous petition

is closed.

05.04.2018

Index:Yes/No
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P.VELMURUGAN, J.
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To

The District Munsif cum Judicial Magistrate No.I,
Hosur.

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