

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.1043 of 2015 and
M.P.No.1 of 2015

1.Veeramani
2.Alageswari
3.Mekala alias Pathmavathi .. Petitioners

Vs.

1.Kalyani
2.Ravichandran
3.Senthil .. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 24.11.2014 made in I.A.No.1069 of 2014 in I.A.No.123 of 2013 in O.S.No.43 of 2013 on the file of the District Munsif Court, Attur.

For Petitioners : Ms.Zeenath Begum

For Respondents : Mr.P.Jagadeesan

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 24.11.2014 made in I.A.No.1069 of 2014 in I.A.No.123

of 2013 in O.S.No.43 of 2013 on the file of the District Munsif Court, Attur.

2. The petitioners are the plaintiffs and respondents are the defendants in O.S.No.43 of 2013 on the file of the District Munsif Court, Attur. The petitioners filed the said suit for declaring the right of the petitioners to irrigate their lands in 'A' schedule with the water from the well situated in 'B' schedule through the underground water pipe line situated on the western fringe of S.No.106/8E of Kallanathan village and consequently, for permanent injunction and for declaring the right of the petitioners to use the 15 links width south north pathway situated on the entire western fringe of the lands in S.No.106/8E of Kallanatham village to have ingress and egress to their lands in 'A' schedule and consequently, for permanent injunction. The petitioners also filed I.A.No.123 of 2013 under Order XXXIX Rule 1 and 2 read with Sections 94 and 151 C.P.C., for interim injunction.

3. The third respondent filed written statement in the month of April 2014 and the same was adopted by the respondents 1 and 2 and are contesting the suit. The respondents filed I.A.No.1069 of

2014 under Order XXVI Rule 9 and Section 151 C.P.C. for appointment of an Advocate Commissioner to identify and measure the suit properties with the help of the surveyor by utilising the revenue records of FMB, 'A' register, chitta and adangal and specifically note down the existing physical features of the entire suit properties and note down whether the underground water pipe line is existing in the western fringe of S.No.106/8E of Kallanatham village, Attur Taluk, Salem District and whether the 15 links width pathway is existing in the above said S.No.106/8E and to file a report.

4. According to the respondents, there is no underground pipeline in S.No.106/8E and there is no pathway. The petitioners intended to obtain exparte injunction and laid the pipeline and pathway in S.No.106/8E of Kallanatham village, Attur Taluk, Salem District. No exparte injunction was granted. In view of the fact that there is no underground pipeline and pathway, it is necessary to appoint an Advocate Commissioner to measure the entire suit properties and specifically note down whether the underground pipeline is existing in the western fringe of S.No.106/8E.

5. The petitioners filed counter affidavit and contended that they have no objection for appointment of Advocate Commissioner to find out whether there exist underground pipe line and pathway in S.No.106/8E. There is no dispute with regard to the identity of the suit property as well as existence of common well in 'B' and 'C' schedule properties. The dispute is only with regard to existence of underground pipeline and pathway in S.No.106/8E. Few days prior to filing of the application, the respondents have obliterated the pathway situated in S.No.106/8E and damaged the pipe line in their land. There is no necessity to survey the entire suit property.

6. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, allowed the application and appointed the Advocate Commissioner to find out whether there exist underground pipe line and pathway and also find out from where the pipe line and pathway start and end. The learned Judge has also directed the Advocate Commissioner to find out whether the pipe line is disconnected at any place and to which land, the water is taken.

7. Against the said order dated 24.11.2014 made in I.A.No.1069 of 2014 in I.A.No.123 of 2013 in O.S.No.43 of 2013, the present Civil Revision Petition is filed by the petitioners.

8. The learned counsel for the petitioners contended that the petitioners are not challenging the portion of the order appointing the Advocate Commissioner to find out whether there is underground pipe line and pathway in S.No.106/8E. The petitioners are challenging only the portion of the order, whereby the learned Judge directed the Advocate Commissioner to find out from where the pathway and pipe line starts and where it ends. The dispute is only with regard to existing pipe line and pathway in S.No.106/8E. The learned Judge erred in directing the Advocate Commissioner to find out from where the pipe line and pathway starts and where it ends.

9. The learned counsel for the respondents contended that only if entire property is measured, it will be seen whether there exist underground pipe line and pathway in S.No.106/8E and prayed for dismissal of the Civil Revision Petition.

10. Heard the learned counsel for the petitioners as well as the respondents and perused the materials available on record.

11. The contention of the learned counsel for the respondents is without merits. Admittedly, the dispute is with regard to existing underground pipe line and pathway in S.No.106/8E. In respect of other claim of the respondents, there is no dispute. In view of the same, it is sufficient, if the Advocate Commissioner is directed to find out whether there exist underground pipe line and pathway in S.No.106/8E and whether the pipe line was disconnected at any place and water is diverted to the land of the respondents.

12. For the above reason, the impugned order of the learned Judge dated 24.11.2014 is partly confirmed directing the Advocate Commissioner to find out whether there is any underground pipe line and pathway in S.No.106/8E and if so, whether the pipe line is disconnected and water is diverted to the respondents' land and whether pathway in S.No.106/8E is obliterated. In respect of other portions, the order of the learned Judge is set aside.

13. In the result, the Civil Revision Petition is ordered accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

07.02.2018

Index:Yes/No

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To

The District Munsif
Attur.



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V.M.VELUMANI,J.

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