

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD)No.703 of 2015
& M.P.No.1 of 2015

A.Venkatachalam

.. Petitioner

Vs.

1.S.Poomalai
2.Sudhakar @ Thirumurugan
3.Azhagesan
4.Kumaresan

.. Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 18.09.2014 made in I.A.No.1374 of 2013 in I.A.No.1115 of 2013 in O.S.No.360 of 2013 on the file of the District Munsif Court, Attur, Salem District.

For Petitioner : Mr.G.Purusothaman

For Respondents : Mr.S.Sathiachandran

ORDER

The Civil Revision Petition is filed against the fair and decretal order dated 18.09.2014 made in I.A.No.1374 of 2013 in I.A.No.1115 of 2013 in O.S.No.360 of 2013 on the file of the District Munsif Court, Attur, Salem District.

2. The petitioner is plaintiff and respondents are the defendants in O.S.No.360 of 2013 on the file of the District Munsif Court, Attur, Salem District. The petitioner filed said suit for permanent injunction restraining the respondents from interfering with his peaceful possession and enjoyment in the suit property. Along with the suit, the petitioner filed I.A.No.1115 of 2013 for interim injunction. The respondents filed I.A.No.1374 of 2013 for appointment of an Advocate Commissioner to note down the existing A, B, C, D cart track and other physical features of the suit property and file report.

3. According to the respondents, there is a cart track in S.Nos.4, 6 and 66 of Kattukottai Village, Poramboke land and the said cart track is in existence for a long term. Their ancestors and

subsequently, the respondents are using the same by taking men, cattle, tractor and lorry to reach their land. The petitioner is trying to obliterate the existing suit cart track. The respondents have given complaint and F.I.R. was registered in Crime No.473 of 2013 against the petitioner. The respondents have also given representation to the President, Village Panchayat and Block development Officer of the Panchayat Union to form a gravel road in the place of existing mud road. The Village Panchayat passed a resolution on 02.10.2013 and advised the petitioner to remove the encroachment in the part of the cart track. In such circumstances, it is necessary for appointment of Advocate Commissioner to find out existing cart track in S.Nos.67/1, 67/2, 71/1 and 4/14.

4. The petitioner filed counter affidavit and denied the averments made in the said application. According to the petitioner, the respondents tried to lay a cart track in the suit property. The petitioner prevented them and gave a complaint to the police and F.I.R. was registered against the respondents. After filing of the suit, the respondents trespassed into the suit property and laid cart track. If the Advocate Commissioner is appointed, he may be

directed to measure the land in S.Nos.67/1, 67/2 and 4/13 with the help of the surveyor and file report.

5. The learned Judge considering the averments made in the affidavit, counter affidavit and materials available on record, appointed Advocate Commissioner to inspect the property in S.Nos.67/1, 67/2, 71/7 and 4/14 and file report.

6. Against the said order dated 18.09.2014 made in I.A.No.1374 of 2013, the present Civil Revision Petition is filed by the petitioner.

7. Heard the learned counsel for the petitioner as well as the respondents and perused the materials available on record.

8. From the materials available on record, it is seen that the learned Judge has appointed the Advocate Commissioner and directed him to inspect the suit property to find out whether there is any cart track and file report. The objection of the counsel for the petitioner is that the Advocate Commissioner must inspect the property along with the surveyor and to measure the property with

metes and bounds and file report. It is the case of the petitioner that after filing of the suit, the respondents 1 and 2 have trespassed into the suit land and has laid cart track. In the affidavit filed by the respondents in the present application, the respondents have stated that cart track is in existence in S.Nos.4, 6 and 66 for a long time, which is the revenue poramboke land. In the schedule given in the present application, the respondents have given 14 feet cart track in S.Nos.67/1, 67/2, 71/7 and 4/14 and 66.

9. In view of the rival contentions made by both sides with regard to existence of cart track, the learned Judge is directed to reissue warrant of commission to the same Advocate Commissioner to inspect the suit property and measure the same along with the surveyor and to file report.

10. With the above direction, the Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

03.01.2018

Index : Yes/No

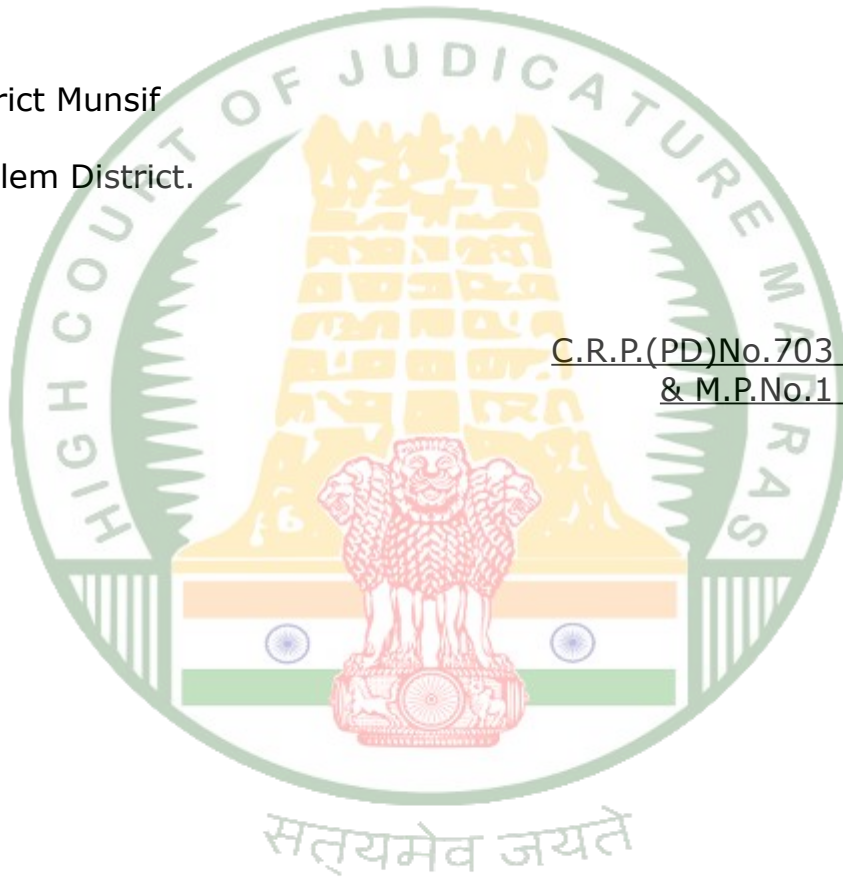
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V.M.VELUMANI, J.

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To

The District Munsif
Attur, Salem District.



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