



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 06.09.2018

DELIVERED ON : 26.09.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P. (PD) (MD) No.1245 of 2015

and

M.P. (MD) No.1 of 2015

N.Natarajan

..Petitioner

Vs.

1.S.Govindasamy

2.M.Saivam

..Respondents

Prayer : This Civil revision petition is filed under Article 227 of Constitution of India, to set aside the order dated 06.09.2014 passed in I.A.No.497 of 2014 in O.S.No.4 of 2013 by the District Munsif Court, Thiruvaiyaru.

For Petitioner : Mr.S.Anand Chandrasekar

For Respondents: Mr.V.Chandrasekar

ORDER

Heard Mr.S.Anand Chandrasekar, learned counsel appearing for the petitioner and Mr.V.Chandrasekar, learned counsel appearing for the respondents.

2.This petition has been filed to set aside the order dated 06.09.2014 passed in I.A.No.497 of 2014 in O.S.No.4 of 2013 by the District Munsif Court, Thiruvaiyaru.

3.The petitioner is the defendant and the respondents are the plaintiffs in the suit. The respondents filed a suit in O.S.No.4 of 2013 seeking for a permanent injunction and for a mandatory injunction. The petitioner filed a petition in I.A.No.497 of 2014 to re-issue the Commissioner warrant to inspect the suit property and to measure the same with the assistance of the qualified Supervisor. The trial Court dismissed the petition and this revision petition is filed against the order.



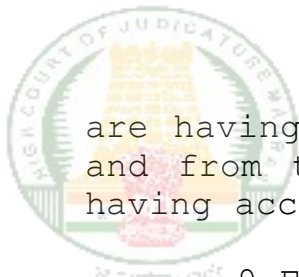
the Advocate Commissioner to note down the physical features of the suit property and to measure the suit property with the assistance of a qualified Supervisor. The Advocate Commissioner have not measured the suit property with the assistance of the qualified Supervisor. It is wrongly stated in the Commissioner's report that there is no access to the second respondent's house except the suit property. Such observation is out of the scope of the warrant and hence, it is necessary to re-issue the Commissioner warrant directing him to inspect the suit property to measure the same with the assistance of the qualified Supervisor and prayed to allow this revision petition.

5. On the side of the respondents, it is stated that it is wrong to state that the Commissioner has measured the property without the assistance of the qualified Supervisor. The Advocate Commissioner has pointed out that there is no alternative pathway available to the respondents. The respondents were using the pathway for the past 60 years and the petitioner is trying to construct a new building in the suit property. Re-issuance of the warrant is not necessary. The suit property is a natham poramboke and this petition is to be dismissed.

6. On the side of the petitioner, it is stated that the respondents filed a suit for permanent injunction and mandatory injunction claiming the right of path way in Survey No.76/35. There are two points raised by the respondents. One is that the respondents claiming right over the property and another one is that the respondents are claiming easementary right. It is further stated that Survey No.76/35 is the temple land and the respondents are not having any right of the pathway in the suit property. For a claim of the easementary right, the respondents have to prove the same through oral and documentary evidence. In the written statement, the petitioner has specifically taken an averment that there are other pathways available to the respondents on the southern and western side of the property of the respondents. There is no easementary right on the ground of necessity. The Commissioner has wrongly stated that there is no other path way. Without considering this facts, the trial Court has wrongly dismissed the petition.

7. On the side of the respondents, it is stated that it is the burden of the respondents to prove the existence of the pathway. The petitioner can only cross examine the Commissioner and he cannot pray for re-issuance of warrant. Only to drag on the proceedings, the petitioner has filed this petition and prayed to dismiss this petition.

8. Records perused. A perusal of the records reveals that the plea of the petitioner is that the property is a temple property not a poramboke and the temple is in continuous possession and enjoyment of the property and that the respondents



are having separate access to their houses from the southern side and from the western side. It is wrong that the respondents are having access only thorough the temple property.

9. From a perusal of the Commissioner's report, it is seen that the Commissioner did not utilised the service of the Surveyor. The Commissioner has not stated anything regarding the availability of other pathways. The Commissioner's report reveals that the pathway is on the northwestern corner of the first respondent and the pathway to the second respondent house was closed with the fence and there is road available for the other house. Only for the house of the second respondent, there was a fence. Availability of other pathways are not detailed in the Commissioner's plan. It is the duty of the respondents to prove the case. A perusal of the records reveals that the Commissioner's has not availed the service of the Surveyor. The Commissioner has failed to note the availability of any other pathway. Hence, the trial Court is directed to re-issue the Commissioner warrant by following the procedures as per law with a direction for the Commissioner to measure the suit property and the adjoining properties and to note down the physical features as to the particulars of the pathways available and to file a fresh report with new plan and to strike off the earlier Commissioner's report and plan.

10. With the above directions, this Civil Revision Petition is allowed. No Costs. Consequently, M.P.(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

The District Munsif Court, Thiruvaiyaru.

+ 1 CC TO MS.SARVABHAUMAN ASSOCIATES, IN SR NO.87050

+ 1 CC TO MR.V.CHANDRASEKAR, ADVOCATE IN SR NO.87026

mrn

BU/NM/RP/SAR-IV :14.11.2018 : 3P/4C