



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :09.07.2018
CORAM

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

C.R.P. (MD) No.1506 of 2013

and

M.P. (MD) .No.1 of 2013

WEB COPY

1. Alagu Muthu
2. Lakshmiammal

.. Petitioners/Petitioners/
Appellants/Defendants

Vs.

Kumaravel

.. Respondent / Petitioner /
Respondent / Plaintiff

PRAYER: Petition filed under Article 227 of the Constitution of India, against the fair and decretal order dated 29.04.2013 passed in I.A.No.28 of 2013 in A.S.No.11 of 2012, on the file of the learned Sub Judge, Paramakudi.

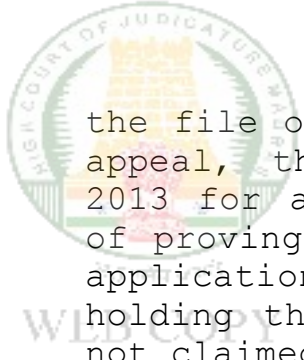
For Petitioners : Mr.P.Athimoolapandian
For Respondent : Mr.P.T.S.Narendravasan

ORDER

This Civil Revision Petition is filed by the defendants in the suit in O.S.No.31 of 2008 against the order dismissing the petition in I.A.No.28 of 2013 in A.S.No.11 of 2012 filed by the defendants to appoint an Advocate Commissioner.

2. The respondent in this Civil Revision Petition being the plaintiff in O.S.No.31 of 2018 filed the suit before the learned District Munsif, Muthukulathur for permanent injunction restraining the revision petitioners herein from interfering with his peaceful possession and enjoyment of the disputed property. The dispute between the parties in the present suit is regarding the property in Survey No.354/1, measuring to an extent of 150 feet (East-West) and 15 feet North-South on the West and 10 feet on the East shown as it is a public street. The revision petitioners claimed ownership over the said property by stating that the suit property is their ancestral property. Though it is stated in the plaint that the revision petitioners/defendants have encroached the suit property, the same is denied by the defendants and it is further stated that the plaintiff can not claim title or enjoyment over the property without any material.

3. The suit was decreed as prayed for holding that the suit property is a street and that the plaintiff is entitled to a decree for permanent injunction as prayed for. Aggrieved over the same, the defendants preferred an appeal in A.S.No.11 of 2012 on



the file of the Sub Court, Paramakudi. During the pendency of the appeal, the defendants/revision petitioners filed I.A.No.28 of 2013 for appointment of an Advocate Commissioner for the purpose of proving that there is no road which is in existence. The said application was dismissed by the lower Court by specifically holding that in respect of the suit property, the defendant has not claimed any right or title.

4. The learned counsel for the respondent/plaintiff further submitted before this Court that the suit property has been admitted as a common pathway in a previous suit. This point is also raised in the pleadings. By referring to the memo of grounds filed by the petitioners, it is demonstrated that the existence of the property, as a street, is not disputed by the revision petitioners in the appeal proceedings. In that view of the matter, the purpose of appointment of an Advocate Commissioner is unnecessary. Hence, this Court find no merits in the present Civil Revision Petition and the same is liable to be dismissed.

5. In the result, this Civil Revision Petition is dismissed and the order dated 29.04.2013 passed in I.A.No.28 of 2013 in A.S.No.11 of 2012, on the file of the learned Sub Judge, Paramakudi is confirmed. No Costs. Consequently, connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

1.The Sub Judge,
Paramakudi.

2.The Record Keeper, (2 copies)
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

PJL

VB/SV/SAR3/19.07.2018/2P/4C

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